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Wednesday 8 December 1993

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Mercredi 8 décembre 1993

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Teachers' Pensions

Régime de retraite des enseignants



Chair: Rosario Marchese
Clerk: Donna Bryce

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

J-971

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 8 December 1993

The committee met at 1607 in room 228.

TEACHERS' PENSIONS

The Chair (Mr Rosario Marchese): I'd like to call this meeting to order. We're here today to consider the matter of issues related to teachers' pensions. We will begin with the presentation from the staff of the Ministry of Education and Training. We have Ms Margot Nielson, senior manager; Ms Joan MacCallum, policy adviser to the teachers' pension plan unit; Mr Ron Robinson, senior legal counsel, legislative branch; and Mr Clare Pitcher, chief actuary, Management Board of Cabinet staff.

Welcome here today. We have half an hour for your presentation. I'm assuming you won't need more time, but more or less a half an hour. Please begin.

Ms Margot Nielson: Thank you. We have handed out the presentation and also some handouts that I'll be referring to during the course of the presentation.

First of all, I thought some of you might appreciate an overview of the teachers' pension plan. Many of you are familiar with it. It's one of the oldest and largest pension plans in Canada. It was established in 1917 and it has been under sole government sponsorship from 1917 until 1992.

One other happening that I'm sure most of you remember was in 1989, when we were in the midst of negotiations which resulted in the merger of the two funds at that time, which were the teachers' superannuation fund and superannuation adjustment fund, into one fund, which was then allowed to be invested in the market. The government at the time created the Ontario Teachers' Pension Plan Board to oversee the investment of the assets and the administration of the benefits.

Another issue is the move to partnership in 1992, which I will deal with in a minute.

Currently, there are 160,000 active members and 41,000 pensioners. There are also 88,000 inactive members. These are teachers who have at one time been members of the plan who have credit or money still left in the plan. So you can see the size of the plans. Almost everyone in the province I think has been a teacher at some point or had known a teacher or had some interest in the plan.

Members pay 8.9% of salary. This is now matched by the government. The board is a 50-50 board with responsibility for the benefits, the assets—by the way, in 1990, when the assets were given to the pension board and allowed to invest in the market, it was worth about \$18 billion. So it's grown substantially in the past three, almost four, years. The board also has responsibility for the actuarial evaluations of the plan and for communications with its members.

We reached partnership on January 1, 1992. That was with the Ontario Teachers' Federation. What joint sponsorship means is that all future gains and losses would be shared on an equal basis and the OTF would

have equal say in all aspects of the plan.

The board, which had been a government majority board, then became a 50-50 board and Gerry Bouey, former governor of the Bank of Canada, who was the original chair appointed by the government, was asked to stay on by the OTF and the government to oversee the new joint board.

When we were doing the partnership agreement, we came to the discovery that the Pension Benefits Act does not contemplate partnerships. I know there was some discussion in the House the other day of, I guess, the Conrad Black amendment and some of the issues surrounding that. This is what we found when we were looking at how to set up this plan so that the teachers and the government would be equal partners and would be able to share gains in the future and also to share the liabilities.

This is very unique in that plan members, if there are ever losses in the plan, will not only have to absorb losses through increases in contribution rates but also may be responsible for paying unfunded liabilities. As I say, I must repeat, it is unique. There aren't many plans around that put this type of responsibility on to the actual plan members.

When we were doing the amendments to the act to allow for partnership, we did do a PBA exemption to allow for sharing of gains. One other aspect of the partnership that came into effect in 1992 was that we had a transition phase. This would allow us to move into equal sharing of gains and losses or risk and reward. Certainly the teachers at that point were quite hesitant about accepting this responsibility because it could be very onerous.

I've set out here that what the transition phase did. It said that 100% of the gains, if there were gains, would go to government at a certain date, and then there was a splitting of the gains so that government got a certain share, and then we had what we called the bargainable share. This bargainable share was the residual which was shared equally by the teachers and the government. It could be used to increase benefits, reduce contribution rates, providing there were gains, or to establish reserves; in effect, any other use that the partners could agree on. After 1997 we would move to full 50-50. While we're talking about the sharing of gains, it would also be to pay off losses. Government, during the transition phase, said that it would take a disproportionate share of losses.

Also in the partnership agreement, we did put in a provision that would allow government to use its gains to offset special payments. You cannot have a surplus while you still have a deficit but you can have gains which arise from valuation to valuation, but the Pension Benefits Act says that all gains must be used to pay off any liability that's outstanding.

We have another unique situation here in that we have

a very sizeable liability which government has undertaken to pay off itself. The teachers do not share in the initial unfunded liability; it's solely government's responsibility, set out in schedule 2 to the Teachers' Pension Act. During the partnership discussions we agreed to treat that, in effect, as almost an asset of the plan and to stream payments and to treat it separately.

So after we reached the partnership in 1992 it was almost like starting at zero and starting over again, with any gains or losses shared on the basis set out in the old transition phase. That's another sort of important point that I'd like to bring to your attention now because it does have an impact on the next agreement we reached in August.

Then in August this year, turning to the next page, we reached a memorandum of understanding with the teachers. I've given as one of the handouts a copy of the memorandum of understanding that we did sign. The key points in the memorandum of understanding were that the partners agreed to ask the pension board to do a valuation as of January 1, 1993. The social contract was in progress and we'd had some other actuarial studies done, and we were pretty certain and the plan's actuary had confirmed that there were gains in the plan.

We did request that the pension board prepare a valuation as of that date and that we set aside \$1.2 billion in gains to offset special payments and another \$325 million which would be used to reduce the teachers' social contract obligations. This valuation was approved by the pension board because it has the authority for it and filed with the Pension Commission of Ontario on November 1.

We also have a handout from that valuation which was mentioned, I think, in the Legislature on Monday with a request to see the actual schedule of payments. The handout, which is appendix 1, is straight from the actuarial valuation prepared by the board's actuary and does show how the schedule is prepared and does give you the schedule of payments, which you will notice on the last page. The schedule before using the \$1.2 billion has the figures, and after using the gains to offset the special payments they're zeroed out.

Another part of the memorandum of understanding was that we eliminated the transition schedule to move to the full 50-50 sharing of gains after the January 1, 1993, valuation. The other issue was that we agreed to amend schedule 2 to change the way the special payments were calculated.

This is a really technical issue. I'm sure Clare can clarify any questions you may have on it, but the original schedule of payments that was set out in 1990 was based on a fixed schedule. You could calculate the payment due in 40 years today, in effect. The pension board originally brought this issue up and thought that it was not a very good way to pay off the unfunded liability; it preferred something that had a bit more flexibility and moved with inflation since the liabilities are all indexed. It was really at their request that we initially looked into changing the way of doing the special payments, and together with Clare and the board actuary we came up with this semivariable method, which is a very technical part of the

bill that we've introduced.

The bill itself is, we feel, quite simple. We had a problem of retroactivity—we've been paying payments. Because we have the schedule of payments in the Teachers' Pension Act and the valuation was done as of January 1, 1993, we didn't have the valuation done and filed until November but we had to continue to make the special payments. Because the actuary, when he did the valuation, followed the partners' wishes and said that we wanted to use the \$1.2 billion to offset the special payments, he then zeroed them out, making them not in error but not necessary.

We looked at the Pension Benefits Act and we talked to the pension board and the pension board said, "We would very much like clear authority to repay this money," and we thought that was a reasonable request. We again looked at the Pension Benefits Act and saw again that it's not really appropriate for partnership plans. It's very complex and the timing I think was a big issue too. As the clock ticked and as we went through the whole process to get the repayment, it would almost sort of build on. That's why put in a PBA exemption to section 78.

I also have handed out a photocopy of what's called the Exchange. Exchange is published by the teachers' pension plan board. Exchange goes to all the active members; they also do one for pensioners, but it's their responsibility to inform the plan members and I think they do a very good job of it, whether we like what they say or not sometimes. This particular issue does deal with how the social contract affects the pension.

If you look at the middle pages, it does show what the MOU does, the amount of money that we've requested we put aside for the special payments and for the teachers' social contract obligation, and it does have a chart that shows how the unfunded liability would be offset and how it grows and how it decreases.

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I think there was some concern in the Legislature that perhaps we were trying to put one over on the members. I want to assure you that the members, through the pension board, are always fully informed of what the partners do. The OTF itself also put out Interaction and explained the arrangements that we came to in the memorandum of understanding.

There are a number of issues, turning to page 5. One is the issue that was brought up, a contribution holiday. I think really what we're doing is funding the special payments out of the gains rather than borrowing in the public market or increasing taxes. It's as if we have a credit note at the pension board and we're using up that credit note right now.

With the use of the gains, yes, there are other ways that we could have done it. We could have reduced the amortization or each payment on a pro rata basis. We chose to offset the current special payments as being the best for all concerned, including the taxpayer.

I think there's a question about the size of the unfunded liability. Since we're just offsetting the amounts, there really is no change. The amounts are paid

off. As I say, if we'd applied it to reduce the full amount, it would be lower, but the amount does not grow. It's as if we did make the payments.

That's all I have in the presentation. If you have any questions or if you'd like further explanations, Clare and I will be pleased to try our best to answer them.

The Chair: Thank you very much. What we will do now is ask the members to ask questions of you. What I'm going to propose is that we give each caucus up to 15 minutes if they want to ask questions, and we'll rotate in that way. If they don't wish to use the 15 minutes, we'll continue rotating. Mr Phillips, we'll begin with you.

Mr Gerry Phillips (Scarborough-Agincourt): I'm quite interested in this matter. This section 78 that's exempting the government from that provision, if you were to go to the Pension Commission of Ontario and ask it for approval to take—how much are you taking out of the fund, by the way?

Ms Nielson: It's about \$300 million; the payments from January 1 to December 1. It's just a little bit over \$300 million.

Mr Phillips: If you were to go and ask them for permission to take the \$300 million out, would they be allowed to permit you to do that?

Ms Nielson: We spoke to them about it, because we have the consent of the OTF. We said, "What will we have to do?" and they gave us how many pages?

Mr Ron Robinson: Five or six.

Ms Nielson: Five or six pages of procedures we had to go through. One of the procedures was to notify all members, which is why on the front of the presentation I put the number. About 260,000 people would have to be informed. That wasn't that much of an issue, except we do have the pension board that does inform people. We took the notice provisions.

Mr Phillips: But are they legally allowed to permit you to take money out of a fund that has a \$7.5-billion unfunded liability?

Ms Nielson: Yes. We have an exemption to the PBA which says that we can share gains. This is the one that went through on January 1, 1992, and it allows us to share gains. This is not like we're taking surplus out, because you can't have a surplus like you have a deficit. We're not really taking the funds. They've gone in, but they're being offset, so there is no hole in the funding of the plan. There is no deficit in the funding of the plan.

Mr Phillips: There is an unfunded liability of \$7.5 billion. There's no surplus in there. My understanding was that you cannot take money out of a fund that has that kind of an unfunded liability. But you're saying the pension commission—is that the right term?—has told you you can.

Ms Nielson: The Pension Commission of Ontario.

Mr Phillips: I guess that would be interesting information for us.

Ms Nielson: We have a stream of payments that's set up to fund the unfunded liability, and we have that stream of payments in legislation in schedule 2. We are not not paying those payments, we are just using the

gains to offset them. If we use the gains to offset, we would have paid double for the January 1 to December 1 period.

The Chair: Mr Pitcher, do you want to add something?

Mr Clare Pitcher: Yes. I'm just going to say that these gains were established effective January 1, 1993, the effective date of the valuation. The valuation was completed of course in November. So really we're just recovering those payments from January 1 to November 1, because of the practicalities of evaluation. We continued making those payments for that period of time, not before January 1, which was the effective date of the establishment of the gains.

Mr Phillips: I understand all of this, but the pension commission has said that it believes it is permissible, without this amendment, to withdraw the funds.

Mr Robinson: The previous amendment allowed the situation at the time, and that was fine. The necessity for the amendment at this time was based on—we had the consent of the OTF, we had the consent of the members, and it would be totally impractical for us to have done it any other way.

Mr Phillips: What I think I heard earlier was that the commission told you that legally you could take money out of the fund.

Mr Robinson: They advised us of the procedure for doing that. There were also procedures for reducing the notice procedure and so on and so forth.

Mr Phillips: I would like to see that, if I could. Clare, my worry is that when I look at the communications that have gone out from the teachers, it was their understanding money wouldn't be taken out of the fund.

Mr Robinson: I think Mr Pitcher and Ms Nielson have accurately characterized the type of money that's coming out. Perhaps they could go over that again.

Mr Phillips: Pardon me?

Mr Robinson: Perhaps they could go over the points again as to the types of funds that are coming out. I think that's crucial to the understanding here.

Mr Phillips: I understand you're taking \$300 million back out of the fund, but the communications that have gone out, the teachers' understanding was that money will not be removed from the fund.

Mr Pitcher: This was part of the agreement that was made back in the summer with the teachers. I believe you have a copy of that memorandum of understanding.

The Chair: Could you point to that, Mr Pitcher, for Mr Phillips's sake?

Mr Phillips: I have the memorandum of understanding. I'm just saying that's the latest communication I've seen, which indicates the teachers feel that money wasn't going to be withdrawn.

The size of the unfunded liability—let me just make sure I understand that. My understanding is that on December 31, 1992, the unfunded liability was \$8.8 billion, \$8.9 billion.

Mr Pitcher: Yes. I really think what you're saying is—

Mr Phillips: That was the unfunded liability that was estimated. In a recalculation done January 1, 1993, it came down by \$1.2 billion. So it's \$7.6 billion, I assume.

Mr Pitcher: I'm going straight from the actuarial report, which I believe you have, as at January 1, 1993. The liability, which my friends and I prefer to call the present value of the future government obligations—in any event, this is the term that we seem to be using—was \$8.4 billion, and that's prior to the application of the gains. So compared to your \$8.8 billion, I'm saying, as per the actuarial report, it's \$8.4 billion. I'm not sure where you got the \$8.8 billion.

Mr Phillips: I got it from the public accounts, which I assume comes from you people.

Mr Pitcher: That would probably have been done prior to the actuarial report and was based on an estimate. This is now the actual number as per the independent actuary.

Mr Phillips: Okay.

Mr Pitcher: It's \$8.4 billion as at January 1, 1993. With the application of the actuarial gain of \$1.2 billion, that drops it down to \$7.2 billion. If you want to just look at the handout that Margot gave, which was the bulletin provided by the pension board, and turn to page 5, you'll see towards the bottom of the page there's a graph, just to relate the numbers that I just talked about, because with the graph and the photocopying, sometimes it doesn't come out as clear. The yellow line—

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Mr Phillips: We have it all photocopied, I think.

Mr Pitcher: Do you all have that?

The Chair: Yes, except there's no yellow on it.

Ms Nielson: There was on some of them. I'm sorry, I didn't bring enough copies. Some have a yellow line and some don't.

Mr Pitcher: Okay, let's just talk about the black line for a second.

Mr Phillips: It's all black to me.

Mr Pitcher: Everyone has a black line.

Mr Alvin Curling (Scarborough North): It's all black and white to me.

Mr Pitcher: The left part of the black line, in 1993, where it says "with actuarial gain," that's the \$7.2 billion I'm talking about, the one I just quoted, \$7.2 billion. Just to talk about that for a second—actually I think I'll talk about the yellow line. How many people have the yellow line? Do we all have it?

Mr Phillips: I think we have it, but I can't see it.

The Chair: It's more or less the same, the yellow and the black.

Mr Pitcher: Yes. It's actually \$1.2 billion. It starts in the left-hand margin at \$8.4 billion. That's where the yellow line starts. Sorry about that. You don't have the yellow line, but about three quarters of an inch along, it actually intersects with the black line, and that's at about \$9.5 billion of unfunded liability, corresponding to mid-1996. So August 1996. At that point, the yellow line and the black line become identical. They're exactly the same.

First of all, what I want to talk about is the yellow line. That is basically the trajectory of the liability if none of this ever happened. It's a natural consequence of the funding method that was chosen back in 1989 by the current government, using a level percentage of payroll methodology, that this unfunded liability or present value of future remaining payments would increase over time and then eventually decrease.

It's somewhat different than a mortgage, where in a mortgage you're paying off based on a level dollar amount. We all know in mortgages what happens is, at the beginning of the mortgage, you're paying very, very little principal and a lot of interest. This takes that one step further, and instead of as a level dollar amount, you're paying it as a level percentage of payroll.

As I'm saying, a natural consequence of that is that this liability will increase for a period of years. In fact, you can see by the diagram it increases until about 2014, and then starts to decline very, very rapidly until at the end of the amortization period, 2030, it becomes zero. That's what happens if none of this \$1.2-billion stuff was going on.

Now we've got a \$1.2-billion gain. What we've essentially done then is lowered this liability from \$8.4 billion down to \$7.2 billion, and then at the end of the three-and-a-half-year period, the value of the unfunded liability is at \$9.5 billion, which is identical to what it would have otherwise been. Then it follows the exact same trajectory as was originally contemplated back in 1989 when this method was decided upon.

Mr Phillips: I understand that perfectly. I'm just saying over time, I'm not sure it'll stand up to public scrutiny. This is where the public, I think, go crazy. We have found that the unfunded liability is \$1.2 billion less than we thought. So rather than saying: "Great. Let's continue our payments. It's now not \$8.4 billion, it's \$7.2 billion. Let's keep our payments going," we say: "Great. We are going to take a three-year holiday from this and we're just going to let it run up to \$14 billion or \$13 billion," and kid ourselves about the expense of running this thing.

It's like borrowing money against the unfunded liability. There's no doubt about that. I will be very interested in the proof that this saves taxpayers' money, because I think the interest on this will be higher than the interest we could borrow money for on the market.

I understand why OTF is in agreement with this, because it's helpful on the social contract side. They are doing their best to try and minimize the impact in the clash from the social contract. I understand that completely. But for me at least, the thought of letting this thing run up—it's sort of like, we have a little bit of good news, but we'll get ourselves back to as bad as it was before by taking a 42-month holiday.

Mr Pitcher: But it's not running up to any more than it otherwise would have been. As you can see by the lines, they intersect at 1996 and it's exactly identical.

Mr Phillips: It's not right. If we had made payments, if we'd said, "Listen, now instead of \$8.4 billion, we have \$7.2 billion. Let's reschedule the payments and let's

continue to make payments against that unfunded liability," it wouldn't be that. It would be, if nothing had changed and we still had an unfunded liability of \$8.4 billion.

Mr Lamoureux, the president of the fund, says he'd prefer a different method. He doesn't think this is the best method. He has the fiduciary responsibility for managing the fund and what not. Why would we not listen to his advice?

Mr Pitcher: We do listen to his advice, but we also have the fiduciary responsibility to the taxpayers of the province, and I think this is where our responsibility to both the taxpayers and to the members of the plan comes in. We have to balance those responsibilities.

Mr Phillips: But I challenge you. I think you'll find that this will cost the taxpayers more money.

Mr Pitcher: I don't believe so. In fact, quite frankly, our belief is that it would be fiscally irresponsible to the taxpayers if we did not do this.

I just wanted to comment also on the gains—

Mr Phillips: Could you show me the evidence of that?

Mr Pitcher: Yes, I will in a second. You were talking about the fact that the gains should be applied right to the unfunded liability, as if these gains were only generated from the unfunded liability. The reality is those gains were generated because we're dealing here with a period of low salaries and low inflation. So just from a commonsense perspective, it seems to make sense to apply those gains to offset expenditures for the exact same period they were generated in.

From a provincial point of view, the same things that cause the province's economy to be less than expected, in the sense of lower salaries and lower inflation mean lower taxes, mean lower revenues, those same factors have a positive impact on a pension plan and are exactly what are creating the gains in the pension plan. All we're doing is relating those gains for that period of time to expenditures for that period of time.

The Chair: Mr Phillips, can we come back? We'll move on and come back if we have time. Ms Cunningham, we have up to 15 minutes now.

Mrs Dianne Cunningham (London North): Just to perhaps follow along with that line of questioning, when you talk about the gains, the \$1.2 billion, are those real gains? Are those real dollars or are those dollars that were anticipated to be spent that weren't spent and that's why we now have them? Is this a paper number?

Mr Pitcher: I think what we all have to understand is that in an evaluation of a pension plan, the numbers are all based on estimates. They're based on estimates of the future. What we try to do as actuaries is come up with estimates which are reasonable estimates of what the future may hold. The reality, as of 1993, as compared to 1990 or any year in the recent past, is that the view of the future is much different from what the view was back then, so we reflect that by saying we expect lower salaries, we expect lower inflation; therefore, this is a result. This is just basically an ongoing part of evaluation of a pension plan to be more in line with reality.

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Mrs Cunningham: But I go back to my question. Is this a gain because we didn't pay out as much money in pensions because people chose to stay on for a longer period of time? I don't understand why it would be a gain because of what people paid into the pensions, because they wouldn't have paid in any more; in fact, they probably would have paid in less than what was expected because they didn't make as much money.

Mr Pitcher: It's a gain from several sources.

Mrs Cunningham: Yes.

Mr Pitcher: It's not an easy matter to talk about all these sources, but if I can just briefly.

Mrs Cunningham: Give me four or five of them.

Mr Pitcher: Investment income is a good example, and I think you've seen the report right above the graph, where it shows the rate-of-return performance: 12½% versus an actuarial assumption of 8½%. That will cause a gain to the pension plan.

Mrs Cunningham: Fine.

Mr Pitcher: So excess in investment returns causes a gain. Salaries lower than expected will cause a gain. Inflation lower than expected will cause a gain. Of course, the reverse of that is also true, that investment income less than expected will cause a loss, and salaries and inflation higher than expected will cause a loss. But the reality that we have here and for the foreseeable future is that the investment returns are good and the salaries and the inflation are low.

Mrs Cunningham: But these are real dollars that the fund has realized because of these gains in investment income and not as big payouts because of, for want of a better word, inflation and lower salaries and things like that, right? This is really money for the fund.

I don't understand your answer to Mr Phillips's question. You maybe didn't say this but you inferred that this money isn't all money that would normally be used with regard to just the fund alone.

Ms Nielson: Can I just say something to that? The experienced gains arise from valuation to valuation, and when we negotiated the partnership with the teachers, we anticipated there would be gains, there would be losses, and that the partners could use this. It's real dollars.

Mrs Cunningham: That's right. That's what I wanted to know.

Ms Nielson: Yes, it's real dollars.

Mrs Cunningham: It's real dollars and it relates to this fund.

Ms Nielson: Yes, it does.

Mrs Cunningham: Because of projections or whatever.

Ms Nielson: It's because when we sat down and we did the last valuation in 1990, they thought that, as Clare said, inflation was going to be higher and investment returns weren't going to be as good. So you measure the gains from valuation to valuation. There's no sleight of hand in this; they're real dollars.

Mrs Cunningham: I've got that straight now. So if

we had made no changes at all and we didn't have to talk during the social contract, and everything had been according to the last amendment, which showed the time period for payback with the responsibility of the government, and then the other part shared equally between the government and teachers, and we had our valuation as of January 1, 1992, all of that, how much money would we have paid into the fund in the 1992-93 budget year, where the government was responsible for 100%?

Ms Nielson: We have the special payments that are set out in the Teachers' Pension Act.

Mrs Cunningham: That's right.

Ms Nielson: We have to pay those, unless we have the gains to offset them, which we're doing here. We pay the matching contributions. I think our contributions in total are around \$1 billion with the matching contributions.

Mrs Cunningham: A billion each.

Ms Nielson: Together. Remember, only government makes the special payments. The teachers don't make those payments.

Mrs Cunningham: That's right.

Ms Nielson: So government's commitment to the pension plan is the special payments and the matching contributions.

Mrs Cunningham: So, the special payment, what would it have been?

Ms Nielson: It's as set out in the schedule. It's about—

Mr Pitcher: Three hundred and fifty annually.

Mrs Cunningham: It's \$350 billion annually?

Mr Pitcher: Sorry, million.

Mrs Cunningham: It could have been. Can I go back to this? Now, we do this annually, right?

Ms Nielson: The valuations?

Mrs Cunningham: No, the valuations are only 1992, 1994 and 1997, according to the section that we've just removed, the amendment. Right?

Ms Nielson: Yes, we've changed that now. The partners have altered that.

Mrs Cunningham: That's right, but I'm asking you if they hadn't altered it.

Ms Nielson: Yes.

Mrs Cunningham: We all voted on this, because we thought it was a good thing at the time. It wasn't very long ago either; I remember it well. I was persuaded to vote for it. That's why I'm asking these questions.

Ms Nielson: To be very frank with you, on a working basis with the teachers, the partnership is working really very well.

Mrs Cunningham: But that's not my question.

Ms Nielson: I know.

Mrs Cunningham: I have another job and I'm glad it's working, but it's my responsibility to find out what's different. Obviously, things are better actuarially because you've got more money than what you expected.

Ms Nielson: That doesn't change whether we have the

partnership or not.

Mrs Cunningham: Okay. I actually believe that too. You don't have to convince me. You're asking us to change a section of the act. For want of a better word, what do you call it, section 5? How do you refer to the old section 5?

Ms Nielson: Section 5 was the one that we had—

Mrs Cunningham: It's the one that talks about 100%, 60%, 40% government, and then the equal share is zero and then 40%, 60%, 100%.

Ms Nielson: It's a transition formula.

Mrs Cunningham: How do you refer to that?

Ms Nielson: It's part of the transition phase. We had to put that in because the Pension Benefits Act is only set up for employers. It doesn't contemplate that employees are paying back anything. We had to have a section in the act which allowed us to pay more than we would normally do as an employer and for the teachers to pay us back. Actually, that particular section in the act—

Mrs Cunningham: Because that was part of what you negotiated at the time.

Ms Nielson: That's right, and that was the disproportionate sharing of losses. Since we've negotiated and agreed to remove the transition schedule, we are removing that part because we no longer have to take a disproportionate share of the losses.

Mrs Cunningham: You didn't like this? Is it because we don't have losses or we don't anticipate them, or because it was part of the social contract or what?

Ms Nielson: No. This particular section only had to do with the transition phase that we originally negotiated, and without the transition phase, it was just redundant.

Mrs Cunningham: You don't think we need a transition phase, is that right?

Ms Nielson: No. The teachers and the pension board and the government found that the transition didn't work as well as we thought it did when we originally negotiated it.

Mrs Cunningham: That's what I need to know. Why didn't it work?

Ms Nielson: Maybe Clare can answer this too, but any time you did a valuation, when you had one party who got 60% and another party gained 40%, then any change to the actuarial assumptions would impact on it in an unequal way, and it became very problematic to deal with. I'm a little out of my depth in actuarial matters.

Mr Pitcher: Just to add to what Margot said, we didn't just decide because it was administratively difficult to deal with the transition. Of course it was, as Margot said, in terms of different complications, but that was only part of the reasoning.

The \$1.2 billion essentially was the value of the transitional formula. If we had waited for the transitional formula to unfold as it would have, then based on our new outlook for the future which I just talked about, lower salaries, lower inflation, it would have created that level of gains for the government.

There's a two-sided coin here. The transitional formula

was eliminated, but the other side of the coin was that \$1.2 billion in gains for the government.

Mrs Cunningham: I'm obviously out of my depth too, but I'm going to get the answers anyway because I have to explain them when I go home. So what you're saying is that this was a very rich formula for the government, given the times?

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Mr Pitcher: This formula, depending on what the future would hold, for example, if instead of low inflation and low salaries we were now in a period of high inflation and high salaries—

Mrs Cunningham: Yes, but that's not my question. I understand all that. This was a good formula for the government. Am I right? Am I correct?

Mr Pitcher: If there were gains that were greater than losses, yes. If there were losses greater than gains, no. What this reflected is that we are going from 100% sole sponsorship to 50-50.

Mrs Cunningham: That's right.

Mr Pitcher: The transitional formula was to recognize that we don't go there from today to tomorrow; we do it over a period of time.

Now, what I'm saying is, that we then actuarially valued those expected gains. Now that we are in 1993, almost 1994, we have a better idea of what the next three, four, five years are going to hold. There were actuaries from all three parties involved in these discussions, from the OTF, the government and the independent board, determining what is the most realistic outlook for the future and what is the value of those transitional gains that belong exclusively to the government, and that's the \$1.2 billion.

Mrs Cunningham: That's right and that's pretty good. So, given that, I have to ask you, why did we, during any negotiations, decide to terminate this transitional phase?

Mr Pitcher: Because if we didn't terminate the transitional phase then we wouldn't have \$1.2 billion.

Ms Nielson: It was an agreement between the teachers and the government.

Mrs Cunningham: The second stage which we're getting into now with the 40%—and you saw my question the other day in the House and perhaps you can answer that with regard to the 40%, where I stated that the government could have used its 40% sole share to pay down the \$7.8 billion unfunded liability. This is the question that my colleague was pursuing. I'm just maybe either really thick or I don't understand, during the social contract, why we would have changed this phase-in period and why it would have been an advantage to the government, given what you've just said.

Mr Pitcher: I think what's really important to understand here is that really all we're doing is affecting the timing of the release of these gains. Actuarial methods and assumptions and all this gobbledygook—

Mrs Cunningham: I'm glad you said it, by the way. It looks good coming from you.

Mr Pitcher: —do not affect the long-term, ultimate

cost of a pension, but they certainly can affect the incidence of how an employer and employees contribute to a pension plan.

All we've done here with the transitional form and everything else is: There is \$1.2 billion of gains in the plan that three parties basically agreed on, and that came after a somewhat lengthy discussion and no-debate negotiations that it was the right number—

Mrs Cunningham: Was that based on a specific valuation date?

Mr Pitcher: Yes. That's based as at 1/1/93.

Mrs Cunningham: Okay.

Mr Pitcher: That was the best estimate of those numbers and there were different ways of that \$1.2 billion flowing out. It could flow out at 1/1/93, it could flow out at 1/1/94, 95, 96, 97 or any combination thereof for a number of reasons. We've talked about some of the reasons from a province's perspective, in terms of not wanting to increase taxes, not wanting to borrow on the open market, not wanting to reduce social programs. These are reasons why it made sense to access those gains today.

Mrs Cunningham: What about the valuation on 1/1/92? What was it then?

Ms Nielson: The 1/1/92 valuation was never officially filed.

Mrs Cunningham: Why?

Ms Nielson: Because we wanted to change the way that the special payments—it was filed provisionally, going with a variable form of payments, and it showed—

Ms Nielson: It was a \$10-million gain.

Mr Pitcher: It was a \$10-million gain at 1/1/92.

Mrs Cunningham: I voted for the legislation where the valuation dates were specific, and that's why I'm asking. So your answer then to why the government has decided to terminate the transitional phase-in is because we were then able to access the \$1.2 billion and do other things with it?

Mr Pitcher: That's right, if we were to access that more quickly than we otherwise would have been able to.

Mrs Cunningham: Yes, because you would have had to wait while you would have had to break this agreement, period. You would have had to break the phase-in agreement to get the money or you would have had to wait till January 1, 1994.

Mr Pitcher: Yes, part of it in 1994 and then another part of the rest of it in 1997. That's right.

The Chair: Mrs Cunningham, we'll get back to you and rotate to the other members.

Mrs Cunningham: I appreciate these answers to my questions. I actually think I know what's happening.

The Chair: We'll have time to come back again.

Mrs Cunningham: Thank you.

Mr David Winninger (London South): I too really appreciate your appearing before the committee today. We have many teachers in our ridings who had questions about these issues and they're very complex, but you've done a good job of clarifying and simplifying some of the

issues. I want to make sure and confirm that I'm correct in some of my assumptions, so I'm just going to run through a couple of scenarios with you.

It's my understanding that under previous governments the unfunded liability continued to increase and pension funds of teachers and municipal employees were used as a source for government borrowing and that the borrowing was frequently at less than market rate. Is that correct?

Mr Pitcher: I think it's fair to say that prior to 1989 the unfunded liability or this liability was increasingly not under control; it was totally out of control in the sense that it was not on a fully funded basis. In 1989 it was established on a so-called fully funded basis where all the liabilities were recognized, and the government decided to fund the current initial unfunded liability of, I believe, \$7.8 billion at that time over a 40-year period.

Now, as you'll see in the graph, that was expected to increase but it was increasing on a controlled basis, it was just a natural consequence of the funding method, the level of percentage of payroll rather than level dollar amount, that it would do that for a period of time. That was different than what was happening prior to that time where there was no recognition or at least there was less recognition, shall we say.

Mr Winninger: The graph is quite helpful and demonstrates the plan to pay down the initial unfunded liability. I understand that in 1990 the unfunded liability was estimated, as you said, to be \$7.8 billion?

Mr Pitcher: Yes.

Mr Winninger: But the plan performed better than expected over the last three years?

Mr Pitcher: Yes.

Mr Winninger: And instead of a return of 8.5%, according to this communication from the pension board, the return averaged about 12.5% over the last three and a half years. So I gather that out of these good returns was taken \$1.5 billion to mitigate the effect of the social contract. Is that correct?

Ms Nielson: Yes. Some of it is being used to mitigate the social contract.

Mr Winninger: So \$325 million from the partners' bargainable share—

Ms Nielson: —yes, is going to reduce the teachers' social contract obligations.

Mr Winninger: The number of days of unpaid leave, for example.

Ms Nielson: Yes, over two years.

Mr Winninger: And the remainder of that \$1.5 billion, what does it go towards?

Ms Nielson: It goes to offsetting the special payments, which gives government relief.

Mr Winninger: That the provincial government makes.

Ms Nielson: Yes.

Mr Winninger: To the tune of about \$1 billion a year, as you said.

Ms Nielson: Well, no, the special payments them-

selves are about \$350 million a year.

Mr Winninger: And the rest of it is the regular share.

Ms Nielson: The 1.2 will be used over a number of years.

Mr Winninger: I see.

Ms Nielson: It's like having a credit note at the pension board, so it'll be used up, I think, in mid-1996.

Mr Winninger: Earlier you mentioned that the government's contribution each year is about \$1 billion total to the teachers' pension fund?

Ms Nielson: Yes.

Mr Winninger: One of the important things for teachers to know is that the money used to reduce the teachers' days of unpaid leave and to offset the government's payments will not affect pensionable benefits.

Ms Nielson: No, not at all.

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Mr Winninger: Okay. This was reached as an agreement between the teachers' federation and the government?

Ms Nielson: Yes, it was.

Mr Winninger: I see. If this is a kind of win-win situation both for the teachers and the government, what is there really to complain about here? It looks like the fund is performing well and that the plan to reduce the deficit will be met on target in the year 2030, according to your graph. It seems like a win-win situation. Is there anything that teachers or the government should have to complain about here? I don't see it.

Ms Nielson: The teachers signed off on it and the government did.

Mr Pitcher: We agreed.

Ms Nielson: We agreed.

Mr Winninger: So the debt gets paid down, the teachers' benefits remain the same, the social contract unpaid days leave is mitigated and the government's able to offset its contributions—

Mr Curling: Let's celebrate.

Mr Winninger: —and teachers' contributions to the pension plan are based on a full year. In other words, their contributions and our contributions aren't reduced for the unpaid days. They're based on a full year's contribution.

Ms Nielson: You mean in the—yes.

Mr Pitcher: Both the benefits and the contributions are unchanged.

Mr Winninger: That sounds quite reassuring. Thank you.

The Chair: You asked the right questions.

Mr Tony Martin (Sault Ste Marie): This has been a good session for me as well. I'm not a person who is well versed in these kinds of intricate financial matters or economic planning. I'm not an economist, but I'm trying to put it into words that I can also take back to the people I represent to explain if it should be asked of me.

I did own a small business before I came here and I had an accountant who acted as a financial planner. He

set out sort of a business plan three, four five years down the road and we tried to perform to that. It seems to me what we have here is a plan that is performing well, that has some extra money in it at this point and we have some choices to make.

We can either pay down the debt or we can take that money and spend it on some things that we need at the moment to expand the business or take care of some other needs within the business, particularly if you run into a rainy day. It seems to me that given the economy we're in at the moment—it's pouring—we would take that money and do some things with it that would try and make things a little bit less difficult as we work through the challenges that we confront. Would that be a fair characterization of what we're doing here?

Mr Pitcher: I think it is. I just want to add one thing to what Mr Martin has just said. I think, as I said earlier, exactly the same factors which have a devastating impact on the province's economy, ie, lower salaries, lower inflation, lower taxes, have a positive impact on a pension plan.

So it would seem, from a commonsense point of view, that you want to line up those expenditure offsets at the same time where you've got your expenditure increases because of the same factors, and that's exactly what we're doing here. Because our revenues are lower for certain reasons, we're reducing our expenditures for those exact same reasons; there is exact matching of those revenues and expenditures.

Mr Martin: Are the people who put together the original plan in 1989 basically the same people who are working on the plan now as we rejig it a bit to meet some of the needs that we have in front of us?

Mr Pitcher: I would say so, to a good extent. I wasn't here in 1989 personally, but—

Ms Nielson: I should say that when we deal with the pension plan and the pension plan board we rely a lot on the staff there. They're an arm's-length board. They were established in 1990 and the actuary was then hired, but the government staff is the same.

Mr Martin: So it would be fair to say then that if they've done the kind of job they did in 1989, which has gotten us to a point now where we have actually more money than we anticipated, the decisions that are made now are probably pretty sound as well.

Mr Pitcher: Without a doubt; I think that's a very fair statement.

Mr Martin: I guess the last question I would ask, in terms of these kinds of plans, is that they tend to be fairly cast in stone, particularly if you have agreements between people and there are probably at least two ways of getting out of them or changing them. One is if a certain period in time clicks where there's a formula put in place that says, "At this point we will revisit then and open," and I guess I'm thinking of a mortgage I have. I wish I could change it now, but I can't, so that I could take advantage of some of the savings that could be made and probably not pay down the mortgage any quicker, but spend it on some other things that I need for my kids and for ourselves as a family.

I guess the only other way you could break into this arrangement or agreement is by bringing all the partners again to the table and saying: "We have a common challenge here. Can we find a way to resolve it, using some of these dollars that are beginning to accrue?" It seems to me at this point that's what we've done. I think it's been said two or three times today that the teachers, the government and the board itself have sat down and agreed that this was a good thing to do.

Mr Pitcher: That's exactly what we've done.

Mr Phillips: This is extremely interesting to me because another view on it can be that much of the actuarial savings are a result of assumptions on teachers' remuneration for the next two years. I think that was one of the big savings. You took 2% savings on teachers' remuneration in 1993-94. You could argue—being in the opposition you argue this more—that the government reduced the unfunded liability by creating the savings by taking salaries down, then borrowed \$1.5 billion from the fund, rather than borrowing it on the market, to pay for its various programs, and at the end of three years, the teachers' unfunded liability I think will be \$1.5 billion higher than it would have been if the government had followed one of the other three options.

You've chosen one option, but the other two options are to reduce each payment on a pro rata basis, or reduce the amortization period. You've chosen the one that runs the unfunded liability up the most.

The risk for the teachers, it seems to me, is that they are essentially loaning the government \$1.5 billion, and if the government's having trouble borrowing money on the market, it may be easier to run it up on the unfunded liability. My teacher friends will say to me: "Wait a minute. We created the reduction in the unfunded liability by the social contract, and then we loaned the money to the government."

Maybe I'm wrong and maybe somebody can prove me wrong on that, but that's what I think is happening. One way you can dissuade me of that is to show me the unfunded liability assumptions on the other two things you looked at: Reduce the amortization period and reduce each payment on some form of a pro rata basis.

Mr Pitcher: The unfunded liability at 1993 will be identical, \$7.2 billion, regardless of which of the three methods have been used.

Mr Phillips: Yes, of course it is. At the end of the 42-month period, what will the unfunded liability be on those three bases? That's a question I asked in the House yesterday and I thought I might get the answer here today.

Mr Pitcher: In response to your concern about the OTF and about teachers, I can assure you that the OTF was ably represented.

Mr Phillips: Of course.

Mr Pitcher: In the negotiations, they had their own independent actuary, and of course we've got the board actuary, which is operating from an independent point of view. So you've got three actuaries plus three parties working together and working with somewhat different interests in different areas, to come up to a common

number. Believe me, that was no easy challenge. However, at the end of the day, I think all parties would agree that it's a fair number to both parties and properly represents the situation as at January 1, 1993.

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Mr Phillips: I have never questioned January 1, 1993. I'm talking about the unfunded liability at the end of the 42-month holiday period, using your three different scenarios.

Mr Pitcher: This diagram we've just shown you is something that has gone out to the teachers before. The teachers are all well aware of what the trajectory is, and as we've talked about—

Mr Phillips: That's not the question I'm asking.

Mr Pitcher: —does not alter the end date, does not alter the series of liabilities beyond the three and a half years.

Mr Phillips: No, that's not the question I'm asking. The question I'm asking is, you have on your issues: "Use of the gains: There are three ways in which gains can be applied...(1) reduce the amortization period; (2) reduce each payment on a pro rata basis; (3) offset current special payments. We have chosen option 3," presumably after all the analysis. I just want to know, what would be the unfunded liability on the other two, the unfunded liability showing that little bell curve there?

Mr Pitcher: At what point in time?

Mr Phillips: I'd like to see the same bell curve, but if we can't, then certainly at the end of the 42-month period.

Mr Pitcher: At the end of the three and a half years, if we had chosen to reduce the amortization period and continued to make the \$350 million or \$400 million in special payments either through increased taxes or borrowing, whatever, then the unfunded liability, as far as the teachers' fund would be concerned, would be about \$1.2 billion lower; \$9.5 billion.

Under the method of reducing each payment on a pro rata basis, I don't know exactly, but it would be between the two, between \$9.5 billion and \$8.3 billion.

Mr Phillips: Presumably the pro rata basis wouldn't reduce each payment too much, so maybe it's \$1 billion. Would you think that would be fair? I assume you've got that somewhere.

Mr Pitcher: Sure.

Mr Phillips: That would be useful to have, that number.

The Chair: Can you provide that, Mr Pitcher? That's what he's asking you.

Mr Pitcher: Yes.

Mr Phillips: That's helpful. That's my point. I understand why the government does this, but for the taxpayers it's borrowing money against the unfunded liability.

You mentioned that the taxpayer benefits from this. The taxpayer benefits in this presumably because you're able to pay a lower interest rate on this money than the province is borrowing money for. Is that how the taxpayer benefits?

Mr Pitcher: That's true, what you just said.

Mr Phillips: What's the comparison?

Mr Pitcher: I think the comparison is that in today's market to borrow on the open market for 30 years is about 8.25% versus the interest rate if the unfunded liability were accruing at 8%. So there's a 0.25% differential. There's 0.25% margin, which is essentially the gain on not borrowing from the market, rather doing what we've done.

Mr Phillips: Excuse me. I didn't hear that answer.

Mr Pitcher: At the end of the period, of course, you still owe the \$1.2 billion as well. You've got the differential of the 0.25% on \$1.2 billion, which I think is about \$3 million a year savings, but then of course at the end of the period you still owe the \$1.2 billion.

Mr Phillips: I understand. But in the one case we all see the provincial debt there; in the other case it's kind of nicely hidden, temporarily, but I think less so now.

You mentioned earlier that the teachers would assume part of the responsibility of the unfunded liability. Did you say that?

Ms Nielson: What I said was that in future, other unfunded liabilities, the teachers would assume part of it. The initial unfunded liability is the government's commitment to pay off, but because of the partnership with any future liabilities or solvency deficiencies, the plan members themselves share a responsibility.

Mr Phillips: So the government has 100% responsibility for this.

Ms Nielson: Yes.

Mr Phillips: It wouldn't be surprising, if I were OTF, that I could agree to this too because the province clearly has the financial obligation—

Mr Pitcher: Let's be clear on one thing. This was agreed back in 1989 when the valuation, when this initial setup was made. That's when that decision was made. This is not a recent decision. The government was 100% plan sponsor and owned the unfunded liability at the time. That is not a new development.

Mr Phillips: No, I'm just saying that you said OTF has agreed to this proposal, and I'm saying this proposal deals mainly, I gather, with the treatment of the unfunded liability.

Mrs Cunningham: Could I jump in here, Gerry—

Mr Phillips: Sure.

Mrs Cunningham: —and you have it back and you can have my time if you want it?

The Chair: Can you allow him to answer that question before you jump in? Did you want to answer that?

Mr Pitcher: You're going to have to refresh me what the question—

The Chair: Well, then, Ms Cunningham, go ahead.

Mrs Cunningham: Your response was that it was the original agreement, 100%, and that's not new. That 100% initial agreement for the government was the 1992, I think, to—how long was that? Because then it jumped down to 60%.

Ms Nielson: No, our responsibility for the unfunded liability: It's always been 100% government. That's why it's set out in the schedule to be—

Mrs Cunningham: I guess I'm talking about the sharing part.

Ms Nielson: The sharing of the gains?

Mrs Cunningham: That wasn't the question here? The sharing part wasn't the question?

Mr Phillips: No.

Ms Nielson: I don't believe so.

Mr Pitcher: We have to differentiate between the initial unfunded liability, which is \$7.8 billion, versus actuarial gains or losses that developed after 1990. It's those gains and losses and how those experienced gains and losses will be shared which is covered in the transitional formula. The \$7.8-billion, 100% owned by the government, was a decision made back in 1989-90, and it's separate and apart from any further gains or losses that may develop.

Mr Phillips: Right. The 8% interest payments on the unfunded liability: That's just part of the agreement, is it?

Mr Pitcher: This agreement here?

Mr Phillips: The 8%, that's in a written agreement that that's the annual interest payments on the unfunded liability?

Mr Pitcher: That's the valuation rate at which these liabilities are valued.

Mr Phillips: We can assume you will be paying 8% a year interest on this.

Mr Pitcher: Right. That's what it is calculated at. This is just another actuarial assumption.

Mr Phillips: How is it actually calculated? Is it actually calculated at 8% or is there some formula that kicks in?

Mr Pitcher: It's an estimate of what future interest rates will be in the pension plan over a long period of time.

Mr Phillips: If I could just stay with this for a moment, when you said 8%, I said, "That must be the written agreement at 8%." Is there some formula that's used to calculate the interest payments the government has to make on the unfunded liability?

Mr Pitcher: Certainly, the schedule of payments that I think Margot handed out initially. It's very clear what the schedule of payments is.

Ms Nielson: If I could just interject, the calculation is in schedule 2 of the Teachers' Pension Act. It's how the actual special payments are calculated by the actuary, and that's what we are doing, the amendment to schedule 2.

Mr Phillips: And that's 8% interest.

Mr Pitcher: Right. It's based on 8% interest.

Mr Phillips: The additional \$325 million: I understand the gain of the \$1.2 billion in the actuarial assumptions. Where does the \$325 million come from and how is that actually funded?

Ms Nielson: The actuary, in the valuation, has actually identified gains of I think \$1.525 billion, \$1.2 billion for the government and \$325 million to be used

for the teachers. I think there was an understanding certainly that the \$325 million—it's \$200 million this fiscal year, \$125 million next fiscal year—would be used to offset or to actually increase the general legislative grants so that the number of days would be reduced.

Mr Phillips: I'm getting confused, I guess. The actuarial assumption differences were not \$1.2 billion, they were \$1.5 billion?

Ms Nielson: It's \$1.525 billion. The valuation that you have reveals gains of, I believe, \$1.525 billion.

Mr Phillips: The determination on the split of that between the government's share and I guess the teachers' share, that was part of an—

Ms Nielson: That was part of what we negotiated in the memorandum of understanding in connection with the social contract. You cannot put a 60-40, any split like that, on it. We really started, in some ways, from scratch on that again.

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Mr Phillips: So on the unfunded liability, the numbers you gave me were that the old valuation had it at \$8.4 billion and then you said now \$7.2 billion?

Mr Pitcher: Right.

Mr Phillips: That's a \$1.2-billion difference. Where does the \$1.5 billion come from?

Ms Nielson: The \$325 million is not reducing the unfunded liability.

Mr Phillips: Where is the \$325 million—

Mr Pitcher: It's offsetting the social contract targets, the unpaid days.

Ms Nielson: Instead of taking seven days, we only have to take three.

Mr Phillips: Yes, but isn't going to be \$325 million less going to the pension fund?

Ms Nielson: No. In a perfect world, what would have happened is that all this would be on a perspective basis, and what we would do is give an offset of the \$200 million that the teachers are going to use that we are going to take to increase the GLG this year. We are in effect going to offset it against other payments that we would make into the plan. So teachers get the credit. We get the credit at the plan; the teachers get the credit on the GLG.

Mr Phillips: Is the credit separate from the unfunded liability?

Ms Nielson: Yes, that \$325 million is like a separate credit note at the pension board. It will not be used to reduce the unfunded liability.

Mr Phillips: But the government will make \$325 million less payment into the fund than it had planned?

Ms Nielson: In a sense, yes, because it will be offset. It's part of our agreement with the teachers set out in the memorandum of understanding.

Mr Phillips: So there is \$325 million less going to the pension fund than you had planned.

Ms Nielson: No. The \$325 million—government owes matching contributions of, say, X dollars.

Mr Phillips: It's \$705 million.

Ms Nielson: And there are gains in the plan. We have to give the teachers, under the social contract, credit for this money. Instead of the pension board giving us the money so that we can put it out in the GLG, we're not going to deduct it from amounts we pay in, but the pension fund will get the same amount that it had planned on getting last year or in its estimates.

The Chair: Mr Phillips, we'll continue the rotation and come back to you.

Mr Phillips: Good. This one's interesting.

Ms Nielson: The teachers have wanted some money to reduce their social contract days.

Mr Phillips: Yes, I know.

Mrs Cunningham: If we hadn't changed the plan from the other phase-in, the one we had agreed to before, what would have happened this year, according to the old plan, if we hadn't had the social contract?

Ms Nielson: Nothing.

Mrs Cunningham: Then what would have happened last year?

Ms Nielson: Last year, under the formula we had, we would have filed a 1992 valuation and the government would have had 100% of gains or losses.

Mrs Cunningham: In this case, 100% of gains?

Ms Nielson: Yes.

Mr Pitcher: Which at January 1, 1992, was \$10 million.

Mrs Cunningham: So we would have had \$10 million and that would have been all of our responsibility. This year, that's 60%. How would we then have applied the \$10 million according to the—

Ms Nielson: We would have applied to offset special payments. That's what we have set out in our partners' agreement as the use of any gains arising from the plan.

Mrs Cunningham: How would that \$10 million have been applied, though? Wasn't there a formula the second time around in 1992-93, based on 1992, of 60% the government's responsibility and 40% shared equally between the government and teachers? Wasn't that the way it was supposed to work?

Ms Nielson: But that's not until 1994. In 1992, if that valuation had been filed, if we had changed the way the payments were calculated, then as to that \$10 million, the actuary automatically would have reduced the amount required for the payment by \$10 million. That's the way the money goes back and forth, in effect. It would have just been offset.

Mrs Cunningham: So you're saying that even though there was a gain of \$1.5 billion, only \$10 million of that would have been used for the transition period?

Ms Nielson: No. Back in January 1, 1992, we didn't have gains of \$1.5 billion.

Mrs Cunningham: You had gains, though.

Ms Nielson: Yes, \$10 million.

Mrs Cunningham: Let's go forward then; let's not worry about the past. What do you think the valuation would have been in 1994 if we already had a pot of money of \$1.2?

Ms Nielson: That would have depended on circumstances. It could be that—

Mrs Cunningham: Well, actuarially, you're telling us that circumstances are pretty good.

Ms Nielson: The actuary was saying that circumstances are pretty good on the salaries, the wages and inflation.

Mrs Cunningham: It could have been, maybe, that the \$1.2 billion could have been \$2.8 billion.

Ms Nielson: It could have been zero.

Mrs Cunningham: I don't think so, not if you want me to believe what you've got on the chart.

Ms Nielson: No?

Mrs Cunningham: If you're telling me that in fact we've got better than expected interest payments—

Ms Nielson: That's right, and we've had very good returns in the market, but those are things that may not have been so.

Mrs Cunningham: That's right. But we're supposed to believe you about this chart, based on good projections with regard to that fund. You're not going to tell me today that actuarially I'm supposed to think that the \$1.2 billion won't be more money.

Ms Nielson: No, I'm not trying to. I'm just trying to point out that I don't think we really have the best estimate of 1994.

Mrs Cunningham: I guess what I'm getting at is if the \$10 million could have gone towards the plan a year ago, then \$1.2 could have gone this year and maybe another \$1.2 next year—

Mr Pitcher: No. The \$1.2 represents the value of gains which will be expected over the transitional period. Essentially, what we were doing is speeding up those gains to be able to access them sooner. While we as actuaries don't profess to be God, we do our best to estimate what we think the future will be, and of course we're better at estimating what the future will be over the next five years than the next 50 years.

Given the circumstances we have right now and the projections of various bodies in terms of what inflation is going to look like and what salaries we're going to look at, we've had three actuaries from three different parties represented in this triangle agree that this is the fairest, the most appropriate number to represent the value of those gains.

Mrs Cunningham: If we stop now, if we make this agreement now, those are the best numbers. Did you look at numbers with regard to dates of payments—is that a vote?

The Chair: Sorry, Mrs Cunningham. Would you like to—

Mrs Cunningham: No problem. We're called to the House for a vote.

Mr Winner: The Speaker said five minutes.

The Chair: What we'll do is recess. We should recess for 15 minutes, more or less. We'll come back as soon as the vote is over to finish off the questions we have.

The committee recessed from 1730 to 1747.

The Chair: I call this meeting to order again. We'll distribute the time equally. If all three parties are here, we'll have five minutes each. If not, we'll distribute that time as equally as we can. Mr Martin, you were on the list. We'll begin with you.

Mr Martin: I'm at Mr Mills's microphone here, so—

Interjection: Make it brief, Tony.

Mr Gordon Mills (Durham East): I thought we'd asked all the questions there were possible to be asked. I could never think of anything else to ask.

Mr Martin: Gerry's stimulating some thought here with his line of questioning. I guess the one thing I'd like to know is, could the government, given the circumstances, have made a better deal?

Mr Pitcher: No, I don't believe so.

Mr Martin: Is there anything clandestine in any way in what has happened here?

Mr Pitcher: I believe it's totally appropriate, what we did, and with the agreement of three different parties who were involved.

Mr Martin: How long did this whole process take? How much time and energy and effort went into actually making this happen?

Mr Pitcher: This whole thing dates back 12 or 18 months to when we originally started talking about these kinds of things; certainly prior to the social contract.

Mr Martin: So it wasn't something that Floyd Laughren or somebody dreamt up in the bathroom one morning.

Mr Pitcher: Certainly not.

Mr Martin: Okay, thank you. Those are all my questions.

Mr Mills: Can we have the vote before Mrs Cunningham comes back?

Mr Noel Duignan (Halton North): How do we get in on this pension scheme?

Mr Gary Malkowski (York East): The presentation was very helpful. It was very clear. Could you tell me, though, a little bit what would be the worst-possible-case scenario and what would be the best-case scenario coming from this deal?

Mr Pitcher: I'm not sure I understand that question in the sense of—

Mr Malkowski: I'm curious. You thought this was perhaps the best package that you could arrive at, that the government could come up with with you, right? You were just asked that question. So I guess what I'm trying to get at is, what would have been the worst-case scenario, and is this the best-case scenario for you, sort of in your predictions in the next 10 years or so?

Mr Pitcher: I think this is the fairest as far as the two parties are concerned. As I indicated before, actuaries for both parties were involved in the decision, as well as the actuary for the independent board, which essentially operated to moderate, shall we say, the potentially differing views of the two parties.

The \$1.2 billion we've talked about is the best estimate of what we feel the gains will be over the transitional

period. It may in fact turn out to be more than that, less than that. Of course, we don't know the future until it happens, but this is the best-assumption estimates at this time, as concurred by three parties.

Mr Phillips: I want to continue to pursue this, and maybe longer than we'll have time. The reason is that this is not the only way of doing it. I think there's a better way of doing it that would have been better for the teachers. I understand why the teachers agreed to it, because it was part of the social contract. I don't mean to be overly provocative, but I don't think they had much choice.

I saw where the government delayed a payment to the teachers' pension of \$500 million last year, from January 1 to April 1. The auditor is on to that, and I don't personally think that was in the best interests of the teachers, because now you're going to have to delay payments again this year. The auditor's going to say you can't do that. It's going to create a big hassle, an ongoing hassle that's going to be a hassle for the teachers' pension fund.

I believe a more sensible thing to do would have been to prorate lower payments over the schedule. That way, the unfunded liability would not have been \$1 billion higher than it is. I understand why the teachers agreed to it, the \$325 million, but I don't personally think it's in the best interests of the teachers this way. It's in the best interests of the government.

The manager—the president, the CEO—of the pension board supports that. That's the one that has, as I say, the fiduciary responsibility. What we've heard today is that the government doesn't think that was the best idea. Lamoureux believes one thing; the government believes another thing.

What we hear is the government thinks this is in the best interests because it allows them to, in my opinion, put another \$1 billion of provincial debt in the unfunded liability. I guarantee—I shouldn't say guarantee. I would bet a lot of money that the unfunded liability in the teachers' pension will become part of the provincial debt pretty soon, because the province has 100% of the obligation to pay that. You read the Provincial Auditor's report yesterday. He's beginning to increasingly look at that sort of thing. That's why I'm pursuing all of this. Frankly, the bill will pass on Monday, this will become law, but it won't go away.

Whatever time I've got left, I'd like to pursue the \$325 million one just so I understand that one a little bit better. I gather from what I've heard it's \$200 million less payments this year and \$125 million less payments next year.

I understood there was an obligation for the province to pay a percentage of salaries into the fund. Will we still be paying the same percentage of salary or is this percentage of salary minus the \$200 million?

Ms Nielson: We still pay the same percentage of salary. What we're doing is that the teachers wanted to have money to reduce their days or to increase the GLG from what it would have been, and somehow we have to get that money. So the way we are going to do it is that

we will more or less offset that against the other payments that are going into the plan from the government.

Mr Phillips: But aren't there only two payments? There are special payments and then there's the percentage—

Ms Nielson: The pension contributions.

Mr Phillips: Yes. Isn't that a percentage of salary?

Ms Nielson: Yes, of course—yes, if you're saying we owe \$600 million, and that will be offset.

Mr Phillips: There's a legal obligation to pay that in, but how do you get the agreement to reduce the payment in by \$200 million?

Ms Nielson: We have the teachers' agreement. We can do that in the partnership agreement.

Mr Phillips: So the pension fund will get \$325 million.

Ms Nielson: The pension fund will not be shortchanged in any way, if that's your question.

Mr Phillips: Why would that be, if you should be paying in a percentage of the salary and you're paying \$325 million less?

Ms Nielson: Because it's being made up from the gains. It's again this credit note analogy that is there. If we look at it like you've got a savings account, normally your paycheque gets put into your chequing account and if there's an overdraft, your money just automatically comes in from the other account. So the pension fund is in no way shortchanged on any of this; we just have to have a mechanism to allow the teachers to have the money to reduce their days through the GLG, reduce the number of days they have to take off. We have agreement with the teachers and the pension board to do that.

Mr Phillips: With the pension board?

Ms Nielson: Yes. The pension board is the recipient of the funds.

Mr Phillips: Do I have any more time, Mr Chair?

The Chair: Ms Cunningham has one question and we have approximately four minutes left. So you have time for one more question, if you like.

Mr Phillips: I just want to confirm that we will get the schedule of the unfunded liabilities on the three bases. I know you've done a lot of analysis on it, because in this thing here you mention that you chose option 3 because it was the most advantageous. But if I can see the schedules of the unfunded liabilities on the other two over a period of time, just so I know the difference in the unfunded liability in each of the three scenarios. Not January 1, 1993; I know that number. You don't have to convince me of that.

Mr Pitcher: I assume what you're looking for is the number it would be at mid-1996 under the three methods.

Mr Phillips: Because I suspect you've done a lot of work on it, maybe you could just send me the charts that show, like, the three bell curves. We've got the one bell curve here, I guess getting up to about \$13 billion.

Mr Pitcher: We don't have that specific information.

Mr Phillips: How did you determine which was the best option, then?

Mr Pitcher: This is all part of the negotiations, the discussions, that we undertook. We've already talked approximately of what those numbers would be.

The other thing I think you have to realize is that there is no way right today we could say what the present value of the future claims would be at mid-1996, because we don't know what the current circumstances are going to be at that time.

Mr Phillips: I just say that they did it on one set, and you've got the other two that you did your analysis on. I would have thought you'd have the three bell curves that you could say—

Mr Pitcher: Are you looking for a diagram similar to the graph that's on page 5 here? Is that what you're looking for?

Mr Phillips: Yes, that would be great, on the three.

Mr Pitcher: We can do that.

Mr Phillips: Good, and even if you could write the numbers in, because it's tough. We're talking billions here. Great. That's what I need. Thank you.

The other ones were that I understand the pension commission has given an opinion that you could withdraw money from the pension.

Ms Nielson: No. May I clarify that? We spoke to the pension commission and we asked what the process was. The section in the Pension Benefits Act says that an employer who wishes to do this must apply in writing, and we were given the notification procedures. We did not approach them to ask if we could do it or not. We asked them what the procedures were and they said, "These are the procedures that you follow," and we can supply you with the procedures.

The Chair: Do you want that, Mr Phillips?

Mr Phillips: Yes, that would be helpful. All I've heard on why you want the exemption from section 78 is for speed, but as I read section 78, I'm not sure that you would be allowed to withdraw money from here, because it refers to surpluses. I don't think this fund is in surplus.

Mr Robinson: In my discussions with counsel for the PCO, we ran through that issue that you're raising. It was his opinion that section 78 might well apply in these circumstances, but he wasn't prepared to make a detailed legal opinion over the phone. He and I discussed whether or not that would be appropriate and what the exemption procedures were which do exist and which the PCO controls. I discussed it with counsel from treasury. Our collective opinion was that the exemption from section 78 was the appropriate and legally valid way to go.

The Chair: Mrs Cunningham, we're running out of time. Would you like to ask that one question?

Mr Mills: According to my watch, it's 6 of the clock.

Mrs Cunningham: The committee has to stop right at 6: Is that the deal?

The Chair: We will adjourn at 6; that's right. We have run out of time, Ms Cunningham. There is no more time left.

Mrs Cunningham: Well, I wouldn't mind just making a statement then, just for a second. I just wanted to—

The Chair: Do we have unanimous consent to have her—

Mr Mills: All I'm saying, Mr Chairman, is the rule says 6 o'clock, and 6 o'clock it is, and I'm a stickler for time.

Mr Winninger: Dianne, you could talk to them privately.

Mrs Cunningham: Well, I mean, I've never been anywhere where—

The Chair: Ms Cunningham, there is not unanimous consent. We can't.

Mrs Cunningham: Well, thanks, Gord. Merry Christmas to you.

Mr Mills: Same to you.

The Chair: I want to thank the staff from the Ministry of Education and Training, Mr Pitcher from the Management Board, and cabinet staff for having come and provided this briefing to us and answering questions from the members. Thank you very much. This committee is adjourned.

The committee adjourned at 1801.

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Vice-Chair / Vice-Président: Harrington, Margaret H. (Niagara Falls ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

*Curling, Alvin (Scarborough North/-Nord L)

*Duignan, Noel (Halton North/-Nord ND)

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*Malkowski, Gary (York East/-Est ND)

*Mills, Gordon (Durham East/-Est ND)

Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

*Winninger, David (London South/-Sud ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cunningham, Dianne (London North/-Nord PC) for Mr Harnick

Martin, Tony (Sault Ste Marie ND) for Ms Harrington

Phillips, Gerry (Scarborough-Agincourt L) for Mr Chiarelli

Also taking part / Autres participants et participantes:

Ministry of Education and Training:

Nielson, Margot, senior manager, teachers' pension plan unit

Robinson, Ron, senior legal counsel, legislative branch

Pitcher, Clare, chief actuary, Management Board of Cabinet

Clerk / Greffière: Bryce, Donna

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Monday 14 February 1994

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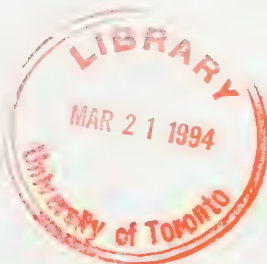
**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Environmental Protection Amendment Act
(Niagara Escarpment), 1993**

**Loi de 1993 modifiant la Loi
sur la protection de l'environnement
(Escarpement du Niagara)**

Chair: Rosario Marchese
Clerk: Donna Bryce



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 14 February 1994

The committee met at 1343 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

ENVIRONMENTAL PROTECTION AMENDMENT ACT
(NIAGARA ESCARPMENT), 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LA PROTECTION DE L'ENVIRONNEMENT
(ESCARPEMENT DU NIAGARA)

Consideration of Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment / Projet de loi 62, Loi modifiant la Loi sur la protection de l'environnement à l'égard de l'escarpement du Niagara.

The Chair (Mr Rosario Marchese): We will begin immediately with the agenda that is before us. We'll ask Mr Noel Duignan to begin with an opening statement.

Mr Noel Duignan (Halton North): It's indeed a great pleasure for me to be here this afternoon. Most of the audience here are my constituents from Halton Hills. I know many of them are making a presentation over the coming days. Many of them have been fighting landfills in the Halton area for many, many years.

We will be discussing my private member's Bill 62 over the coming week. As most members are aware, Bill 62 amends the Environmental Protection Act to prohibit all further waste management systems and waste disposal sites in the Niagara Escarpment plan area as set out in the Niagara Escarpment Planning and Development Act.

The Niagara Escarpment and the lands in its vicinity, some 183,000 hectares in eight counties and regions and 37 local municipalities, are regulated by the Niagara Escarpment Planning and Development Act. Adopted in Ontario in 1985, it is Canada's first large-scale environmental land use plan. It took 16 years to have this bill enacted. During those lengthy deliberations, 530,000 hectares were negotiated away from the original plan.

The plan we have now ensures that the escarpment will be maintained substantially as a continuous natural environment. It strikes a balance between conservation, protection and environmentally compatible development. The Niagara Escarpment Planning and Development Act was and hopefully still is supported by all parties of the Legislature.

"The purpose of this act is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment." My purpose in bringing forth my bill is to strengthen this resolve.

Within five years of plan approval, in February 1990 the Niagara Escarpment was recognized by the United Nations agency UNESCO as a World Biosphere Reserve, one of only six such places in Canada. This designation confers local and international recognition and confirms that Ontario's Niagara Escarpment is endowed with natural characteristics of global significance. The Niagara

Escarpment was chosen a World Biosphere Reserve because it achieves a good balance between preservation of natural areas and environmentally sustainable and appropriate development.

The escarpment currently enjoys an international reputation as a scenic long-distance hiking trail visited by over 300,000 people each year, a valuable tourism resource for Ontario. This number exceeds the visitation of most provincial parks. There is no doubt that these numbers would dwindle if landfills were permitted in the escarpment. The appeal of hiking alongside garbage-laden roadways or quarries would not entice either local or international visitors.

The Niagara Escarpment Commission realized the importance of protecting the escarpment from landfill sites, and as a result amendment 52 to the Niagara Escarpment Planning and Development Act was signed in May 1992. After a public hearing the words "waste collection, disposal, or management" were removed from the section of permitted utilities within the Niagara Escarpment plan area as these would be incompatible with the objectives of the act and the escarpment's status as a biosphere reserve.

The section of permitted utilities was also amended to include small-scale recycling depots for paper, glass and cans serving the local community. Specifically, amendment 52 replaced the definition of "utility." Amendment 52 essentially means that a proponent of a new landfill or landfill expansion would need to obtain an amendment to the Niagara Escarpment plan itself rather than just a development permit from the Niagara Escarpment Commission, since landfills are no longer listed as a permitted use.

Further, in May 1992, the final report of the Dave Crombie royal commission was tabled. The Crombie report recognized the Niagara Escarpment Planning and Development Act as the only plan in Ontario that has jurisdiction on the basis of an ecological entity. The entire Niagara Escarpment forms a headwater area for all municipalities that it crosses through and therefore is a source of drinking water for a large part of the province, including most of my municipality, which relies on its water from the underground aquifers.

It defies common sense to put landfills and the toxins, vermin and heavy metals they contain in such close proximity to the water supply for literally tens of thousands of people. The Crombie report recommended that the Niagara Escarpment become part of a network of greenways which would be protected from inappropriate and unsustainable development and reflect such principles as clean, green, accessible, open and attractive. These principles would hardly be used when describing a landfill site.

1350

Why is Bill 62 needed? Although waste management

facilities have been deleted from the Niagara Escarpment Planning and Development Act's permitted utilities as a result of amendment 52, it is still possible for proponents of a new landfill or an expansion of an existing landfill located in the Niagara Escarpment plan area to apply for an amendment to the Niagara Escarpment plan. This application will certainly be turned down by the Niagara Escarpment Commission. However, proponents of a landfill site are entitled to go through an approval process which includes a consolidated hearing to deal with the environmental assessment and environmental protection regulations. This process is lengthy and expensive. The mayor of my Halton Hills community will attest later this afternoon to how much this actually costs the citizens of Halton Hills. Bill 62 goes one step further than amendment 52 by bringing forward a ban against landfills earlier in the process so that the needless waste of time and money can be avoided.

Bill 62 is a fundamental supplement to the Niagara Escarpment Planning and Development Act which guarantees that a certificate of approval for a landfill site in the Niagara Escarpment plan area would not be approved. I will be bringing forward further amendments to Bill 62 during clause-by-clause consideration which ensure that local recycling, composting and transfer facilities as well as environmentally sound improvements to existing landfill sites in the Niagara Escarpment will be permitted in the spirit of amendment 52.

The provincial government has already set a precedent of not considering landfills within the Niagara Escarpment plan area by screening out the Niagara Escarpment plan area in the Interim Waste Authority's site search. Halton does not need another landfill site, as Halton region has recently gone through an expensive and protracted landfill search. Halton's new landfill site opened in November 1992 and, according to recent stats, will accommodate Halton's garbage for up to 35 years. The Acton quarry was originally on Halton's long list of potential landfill sites but was rejected early in the process because of its location and the risk to drinking water.

Residents of Halton North have been fighting this particular proposed landfill at the Acton quarry for over seven years, and a great deal of time and resources have been spent by local citizens, environmental groups and the municipality to protect the escarpment. Bill 62 would halt such time-consuming efforts in the future by simply banning landfill sites from the Niagara Escarpment plan area.

In conclusion, I believe that Bill 62 is consistent with the all-party support given to the Niagara Escarpment Planning and Development Act in 1985. The Niagara Escarpment Planning and Development Act is one of a kind that has a unique provincial commitment of protection not given to any other land form. A waste management facility would threaten the integrity and the continuity of the land and natural habitat that the plan is supposed to protect, habitat which includes some 1,000-year-old trees, over 300 species of birds, 53 species of mammals, 90 species of fish and 36 species of reptiles, as well as being home to at least 23 endangered, threatened and rare

species of wildlife and an unusual richness of plant species, including 37 species of wild orchids.

The Niagara Escarpment is also a most sensitive area in terms of water quality, and waste sites threaten the long-term viability of clean water for drinking, fishing etc and for all downstream residents and others using water based resources. Just think of what damaged water systems could do to the great concentration of cold-water streams in southern Ontario and their large, healthy population of trout.

Unlike class 1-3 lands, wetlands and environmentally sensitive areas which are found throughout the province, the Niagara Escarpment is a unique landform of which there is only one. Destroy this one and there are no others to replace it. Screening out the Niagara Escarpment plan area is not a vast chunk of land; it is a thin ribbon that represents only 0.17 of Ontario's entire land mass and cuts through eight counties and regions. We should be able to screen out a certain small section of land that has its own land use plan, the only large-scale environmentally based land use in Canada, with its own provincial legislation and its own international designation as a World Biosphere Reserve. Committed to protecting the escarpment means prohibiting landfills in what is an internationally recognized natural resource.

Finally, I firmly believe that landfill operations are inconsistent with the ecological purpose of the Niagara Escarpment Planning and Development Act and do not fit with the notions of appropriate development in an internationally recognized World Biosphere Reserve. Over the years the Niagara Escarpment has enriched and nourished not just the people of southern Ontario but people from all around the world. We cannot and must not compromise one of the most significant, important natural assets of this province.

That concludes my remarks. Most of the people here are residents of my area, and indeed they can speak a lot better and a lot longer to this issue than can I.

The Chair: Thank you, Mr Duignan. Members have indicated they have questions. In the past when a person has introduced a private bill, we have allowed the member to make opening remarks and then moved straight to the presenters. That's the schedule I would like to keep, but given that you have questions, I would ask you to limit questions to a maximum of two so that we can get to the presenters who are here.

Please keep your questions as brief and as short as you can. Otherwise, the schedule will be difficult.

Mr Robert Chiarelli (Ottawa West): First of all, I want to compliment Mr Duignan for bringing this forward. I'm sure he has a lot of support in his community. One of the functions of this committee, of course, is to play devil's advocate and to ask some tough questions and to ensure that when legislation goes forward for third reading and passage, it is good, solid legislation that doesn't have any cracks in it. So I just want to ask a couple of very brief background questions.

How many people live in the Niagara Escarpment at the present time, roughly; in the communities that are in the escarpment?

Mr Duignan: All along the escarpment?

Mr Chiarelli: Yes.

Mr Duignan: It comprises some eight counties and regions. What the total population is, I wouldn't know at this particular time, but you throw in Hamilton and you've got Niagara, St Catharines, up to the Halton region, and you go right up to Grey-Bruce county.

Mr Chiarelli: A good number of people live in the area. When the existing landfill sites are totally full, complete—and they won't be subject to expansion under this particular legislation—where will the waste that requires landfill go?

Mr Duignan: The Halton region, which makes up and comprises the greatest percentage of any region of the Niagara Escarpment, it's nearly 23%, found a regional landfill site—it took them about 15 or 16 years to go through a process—outside of the Niagara Escarpment plan area. The plan area is a very small part of the Niagara Escarpment planning area.

Mr Chiarelli: So what you're saying then is that municipalities within the area will ship their waste outside their own municipal boundaries. Is this what you're saying?

Mr Duignan: No, that's not what I'm saying at all. If you look at each county and region, for example, in the Niagara region, candidate landfill sites have been selected and none are in any plan area. In the Hamilton-Wentworth region, they're not looking for a new landfill in the near future. I'm not sure about that; that needs to be confirmed, but that's what I'm led to believe. The Halton region already has a new landfill site and that's good for another 30-odd years.

In Peel region, the IWA has screened out any landfill sites from the NE plan area. Dufferin county has selected a preferred landfill site which is not in the NE plan area. Simcoe, Grey and Bruce counties we're not sure about. They're preparing waste management master plans at this time and candidate sites have not been selected. So that's a brief summary of what's happening in the areas.

Mr Chiarelli: There won't be any significant shipping of waste outside the municipal boundaries; it'll just be outside the escarpment area.

Mr Duignan: The plan area, yes.

Mr Steven Offer (Mississauga North): I only have one question. I know that you've put a limit of two questions. I have one question and it has three parts.

The Chair: Mr Duignan, you will only have to answer two of the parts.

Mr Offer: I am looking forward to the public hearings because I think there are some questions that have to be posed on this particular matter. I'm just going to ask them, and the member can respond at his leisure.

My first question is, does the Ministry of Environment and Energy support the particular piece of legislation before the committee? The second question I have is, based on the legislation that is before the committee, does this prohibit any remedial work on any existing landfill now located within the Niagara Escarpment? My third question is, for existing landfill sites that are now within

an approved use, will they be able to expand in accordance with the approval that they have previously received if it's necessary to obtain a further certificate?

1400

Mr Duignan: I'll try and answer these one at a time. The answer to the first question is yes, it is supported by MOEE; second, the answer is no; third, I'll be moving some amendments to permit, for example, transfer facilities, composting sites etc and to allow existing landfill sites, if you want to close them down, to put landfill in to make them a bit more environmentally compatible to close them off.

Mr Offer: If no remedial work is permitted on an existing landfill site, and it has been closed and it's leaking and they can't get a certificate, it means that the bill will prohibit the landfill from being protected.

Mr Duignan: My amendments will allow that.

Mr Bill Murdoch (Grey-Owen Sound): Just one question: You mentioned when you spoke in the House when you introduced this bill that the waste disposal sites in the area are set out in the Niagara Escarpment plan. Let me point out that the plan is limited to the escarpment itself and does not include the surrounding areas; that's what you said. So what do you mean by the plan then? Are you including the natural, the protected, the rural, or what do you just exactly mean by that? You say the escarpment itself, which is normally just in the natural area.

Mr Duignan: I know the Niagara Escarpment Commission is up after me, and they may give a more definitive answer to that particular question. However, there are a number of specific plans. There's a plan area and there's also the planning area. My bill is defined just to the plan area, and I've asked for a definition between the natural area, the plan area and the planning area. Hopefully my staff will provide that in the next couple of days so you can see that there is a difference.

The Chair: There's a second question?

Mr Murdoch: No, he didn't answer my question, and this is a serious question. But if you'd like me to wait and ask the Niagara Escarpment Commission, I'll do that, if that's what you'd like me to do.

Mr Chris Stockwell (Etobicoke West): I have no question. I just want to move the motion off the top that I have. I've searched in the documentation handed out by the member and others for the legal opinion that I've moved on Bill 62, the PC motion. I move this with the hope of receiving unanimous consent that it be forwarded on to the legal department, because I think it's rather important. I've not seen it addressed anywhere in the documents we've received, but it seems to me that if we're going to adopt this piece of legislation, this amendment, Bill 62, there are some very real legal ramifications involved, and I don't know if the member has dealt with them. I've not seen them dealt with within the context of his statement or in any backup information.

But what it seems to me is, you're going to unilaterally shut down all landfill within a certain area. There are landfill projects under way. No doubt the member knows about the ones that have been in process for some eight

or nine years. Clearly that's the motivation for the legislation, and I think as a committee, as stewards of the taxpayers, it would be incumbent on us to ensure that we receive an opinion from the government people as to whether or not we're opening ourselves up for a major lawsuit by in fact adopting this piece of legislation.

I just want to say it seems to me that the amount of money that's invested in landfill sites today and the amount of work involved in getting approvals for landfill sites and the amount of time involved—in some of these I think it's upwards of eight, nine, 10 years of work, time and money—are we in fact expropriating without compensation? I feel that there's going to be some debate out there among the proponents of these landfill sites that this is fundamentally expropriation without compensation.

We know what landfill sites run these days as far as revenue is concerned—ultimately, in billions of dollars, without a doubt. Some landfill sites can generate billions of dollars in revenue, and profitability somewhere in that neighbourhood as well.

So I ask the committee, if it's going to go forward with this piece of legislation, hear the deputations, hear amendments and so on and so forth, that we ask the staff to bring back a report on the legalities of adopting this motion put forward by the government members, and if we do adopt it, are we in fact opening ourselves up to multi-billion-dollar legal assaults? Frankly, I think that's a rather important component to this piece of legislation.

The Chair: Can I suggest that we take this as notice and that we deal with this motion on Wednesday afternoon when we have time, before clause-by-clause?

Mr Stockwell: I would prefer that it be adopted today. All we're asking for basically is information from the lawyers in the ministry. Then if they can get back to us within some kind of reasonable time, we, through clause-by-clause, can know full well, adopting it out of this committee, that yes, maybe we are subjecting the citizens of this province to literally billions of dollars' worth of lawsuits.

The Chair: I understand the comments you're making. If there is a lengthy debate or a long debate, I would be worried about how it cuts into the time for our presenters. I'm looking at the agenda to see when we might appropriately do it so that we have the time.

Mr Stockwell: I'm shocked, though, if there would be a long debate asking for a legal opinion.

The Chair: Let me just check. Mr Duignan?

Mr Duignan: There are a lot of deputations from various communities here this afternoon, and we're holding up some time. I like your suggestion of dealing with this Wednesday afternoon. I'm prepared to—

Interjection.

Mr Duignan: Ask Charles Harnick. If this is the case, taking your argument, we would have millions of lawsuits against any government in Ontario. New landfill sites, under amendment 52, are now prohibited at this time on the Niagara Escarpment; you have to go through an amendment process. So they're already outlawed. I will be moving an amendment, Mr Chairman, to make sure that doesn't happen as well.

Mr Stockwell: I do respect the member's legal mind, but I would ask, considering the fact he's not a lawyer and there are a bunch of them that we employ on a daily basis, what harm would it do to get an opinion from the lawyers that we hire, quickly, by unanimous consent, as to whether or not we're going to end up in multibillion-dollar lawsuits? Gee, that's not asking very much.

Mr Anthony Perruzza (Downsview): Talk about a red herring. Why didn't you ask?

Mr Stockwell: I did ask. That's why I'm asking.

Mr Perruzza: Get legislative counsel on the phone. They'll tell you.

The Chair: Mr Perruzza, it's not helpful. I'm willing to have a few moments' discussion on this if the other members want to speak to it, and then we can vote on that matter today. Is that what you want, Mr Stockwell?

Mr Stockwell: Yes, sir.

The Chair: Any other speakers to this motion?

Mr Perruzza: I don't understand the context within which this motion is before us and how we're going to dispose of this motion. We have an agenda, right? Our agenda was basically to listen to people address this committee today, and that's what my concern is.

I don't know what the intent of this motion is. To get a legal opinion, all you have to do is call legislative counsel. You can basically sue anybody any time for anything. That's a pretty sound legal opinion; that's probably the opinion that you would get. So I don't understand what the objective is here today.

If you're asking for unanimous consent, I'm not going to offer my consent for it, and I think we should just move on, listen to people address this committee and on Wednesday afternoon, as you've suggested, perhaps deal with the merits of this motion.

Mr Offer: Maybe I'm misreading this motion, but I don't view this motion as in any way, shape or form stopping this committee from listening to people or going on with its work. What this motion is doing is asking that at some point in time prior to the bill being proclaimed, passed into force, we receive an opinion from, I would hope, the Ministry of the Attorney General as to the legality of the legislation. It is my understanding that whenever any government introduces legislation, prior to the introduction they have always received some legal opinion from the Ministry of the Attorney General as to the legalities of the legislation. In this case, it is a private member's legislation, which may not have had the opportunity of receiving that type of opinion.

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I don't view this motion as in any way, shape or form stopping this legislation. What it is doing is making certain the legislation is one which accords with all the laws of the province of Ontario, which any public piece of legislation will always receive prior to its introduction.

The only thing I would ask is that the motion be specific that it is not asking this committee to render a legal opinion, but rather that it is asking the Ministry of the Attorney General to render a legal opinion to this committee.

Mr Stockwell: Okay, that's fine.

Mr Offer: But I don't find any problem.

Mr Duignan: For the sake of argument and going around in a circle here, because there are deputations that are waiting to be heard from the public, I would simply say let's go ahead and let's get a legal opinion, and also have that legal opinion look at my amendment 1(2) that I'm proposing as well in terms of the legal opinion.

Mr Stockwell: Carried.

The Chair: I'm sorry, what was the amendment?

Mr Duignan: I'm waiting for it to come back from legal counsel at this particular point in time. It should be in here about 2 o'clock.

The Chair: Mr Stockwell said yes to that amendment.

Mr Offer: I think basically what we're saying is that the motion is going to be amended in two ways. The first is that the committee is going to be requesting a legal opinion from the Ministry of the Attorney General as to the wording of the motion as read and it is referred to the bill as amended.

Mr Stockwell: That's fine.

Mr Offer: We can't presume an amendment to a bill. The bill as dealt with in the legislation, so it will take everything into account.

The Chair: All in favour? Opposed? That carries.

NIAGARA ESCARPMENT COMMISSION

The Chair: Moving on to our presenters, the Niagara Escarpment Commission, Ms Little, Mr Borodczak and Mr Louis, you have half an hour for your presentation. We always urge our presenters to leave plenty of time for questions, so if you'd keep your initial remarks to 10 or 15 minutes, that would be helpful.

Ms Joan Little: Good afternoon, Mr Chairman and members of the committee. Thank you for this opportunity for input into Bill 62. My name is Joan Little and I'm proud to be chair of the Niagara Escarpment Commission. With me are Nars Borodczak, our director, and our manager of plan administration, Cecil Louis, who will be glad to respond to questions as well.

The commission oversees management of one of Ontario's and in fact Canada's most acclaimed treasures, the Niagara Escarpment.

The commission strongly supports the intent of the bill, but notes a conflict in definitions between the bill and the escarpment plan, and I think from what Mr Duignan has said today that our concerns will probably be resolved by his amendment but I'd like to give you some background information, just to put our concerns into context.

In 1973 the Niagara Escarpment Planning and Development Act was proclaimed, which created a commission and launched a planning process to develop a Niagara Escarpment plan. The purpose of the act, section 2—and I'm quoting directly; this is the whole purpose of the Niagara Escarpment act—is “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.”

The relevant objectives of the act, and I've just chosen

four which relate to this bill, are:

“(a) To protect unique ecologic and historic areas;

“(b) To maintain and enhance the quality and character of natural streams and water supplies...;

“(d) To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;

“(e) To ensure that all new development is compatible with the purpose of this act as expressed in section 2.”

On June 12, 1985, after 12 years of work, public meetings and hearings, with strong public support and with the support of all three political parties, the plan was approved. It's the first large-scale environmental land use plan of its kind in Canada and is internationally known and envied.

The escarpment crosses eight regions and counties and passes through 43 municipalities. It contains seven different land use designations. They are: escarpment natural, escarpment protection, escarpment rural, minor urban, urban, recreation and mineral resource extractive. Preservation measures are most stringent in the natural and protection areas.

I have copies of our annual report, which has been handed out, which is full of information about our program which you may wish to refer to. You'll probably like the report. I think we've done something unique. We have a very attractive poster of the Niagara Escarpment on the one side, with information on the back about the programs.

The 1985 plan permitted “utilities” or “essential utilities” to be located in the natural, protection and rural designations, and the definition of utilities included “waste collection or disposal or management.”

In 1989 it was pointed out to the commission that this anomaly would permit landfills in the most sensitive areas of the entire escarpment. The commission initiated an amendment to the plan, Niagara Escarpment plan amendment 52, commonly referred to as NEPA 52. I'm sure over the next few days everybody will be talking about NEPA 52, and that's what they're talking about. That would delete waste disposal and related operations as permitted uses and redefine a utility.

In accordance with our act, all municipalities within the plan were sent a copy of the plan amendment for comment. Ads were put in local newspapers, and ministries and the conservation authorities were circulated. In addition, two committees were established to provide input. The amendment generated support from the public, the ministries, conservation authorities and the majority of the municipalities but opposition from the waste industry.

Several municipalities questioned whether the wording would prevent them having transfer stations, small-scale recycling depots, compost facilities or temporary storage areas for household hazardous wastes, such as paint and so on, at their landfill sites to serve the local communities. This had not been the intention, and the commission amended the wording to ensure that these local waste reduction facilities would continue. Copies of the hearing

officer's report on NEPA 52 have been provided for you as well.

NEPA 52 proceeded to a hearing, which occupied 22 days. In May 1992 it received cabinet approval and now forms part of the Niagara Escarpment plan. A copy of the order in council has also been provided to you. This all started in 1989.

Another very significant initiative began in 1989. The commission was approached by George Francis of the Working Group on Biosphere Reserves. He believed the Niagara Escarpment qualified for designation by the United Nations as an international biosphere reserve and he asked concurrence from the commission to seek that designation from UNESCO. On April 4, 1990, Federico Mayor of UNESCO came to Canada and formally pronounced the Niagara Escarpment an international biosphere reserve, one of only two in all of Ontario.

The objectives of the biosphere emphasize maintenance of the natural environment and the concept of allowing for compatible and sustainable development. We've also provided you with a press release on this designation.

This honour makes us very aware of our responsibility to the public. We seek public participation when changes are contemplated, as we did with NEPA 52.

For this reason, we have some concern with the wording of Bill 62 as initially proposed, although we wholeheartedly support the intent.

Bill 62 does not permit a "waste management system or a waste disposal site" in the Niagara Escarpment plan area. NEPA 52 doesn't either. So they're in agreement. The problem arises with the definition of "waste management system" in the Environmental Protection Act.

We believe that under the EPA definition the transfer station, small-scale recycling facilities and/or compost facilities serving the local community would not have been permitted. We feel certain this wasn't the intent of the bill, and if it could be amended so the language followed the wording of NEPA 52 and did not prohibit these local initiatives, we'd be pleased to wholeheartedly support Bill 62.

I'd like to commend you for your interest in our environment and our Niagara Escarpment, and we would be pleased to answer questions.

Just one final statement: I think Mr Duignan's announcement today that he would be putting forward amendments to resolve the conflict would resolve our problems with Bill 62, and on that basis we're delighted to lend wholehearted support.

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Mr Offer: Thank you for your presentation. Right now, of course, you are basically the first presenter on Bill 62, and we've heard Mr Duignan indicate that he is going to be presenting an amendment. We haven't yet seen the amendment, and I have a concern, and unfortunately he is not here at this time. Mr Chair, I would appreciate it, if it were possible, that we could get Mr Duignan's amendment as soon as possible so that when deputants come before the committee, we could question them not only on the bill but also to make certain that whatever the proposed amendment is, it meets any

concern they may have with Bill 62, as you have just indicated.

I recognize that we are going to be dealing with this bill, if memory serves me correctly, at a clause-by-clause stage this coming Thursday. That will be after all of the public hearing process. We're going to have an awful lot of people come before the committee, and I hope, since you have been dealing with this bill for some time now, that you would be able to have this amendment, as proposed in your opening statement, before this committee. I would hope that it would be here, if not today, then certainly first thing tomorrow so we could make certain the concerns we may hear are going to be able to be addressed.

Now to get to my question: Could you please indicate how this bill should be amended in order to meet your concerns?

Ms Little: Our concern is simply that we went to the public with a plan that would permit the municipalities to have composting and transfer stations and I guess I should call it domestic hazardous waste depots; you know, where you can take your old paint cans and so on. Our concern is simply that we've gone through a process that permitted all that and we would like to make sure that those things are retained. Our concern was that in reading the definition in the Environmental Protection Act of "waste disposal system," that was a problem. So if those things were included, that would meet the intent of NEPA 52 and we'd be happy with it.

Mr Offer: So your reading of Bill 62 right now is that as it's presently worded, it would outlaw all composting on the Niagara Escarpment?

Ms Little: I believe so. The concern was "waste management system." That was the wording in the bill that was the problem. When I read the "waste management system" definition in the Environmental Protection Act, it reads,

"'waste management system' means all facilities, equipment and operations for the complete management of waste, including the collection, handling, transportation, storage, processing and disposal...and may include one or more waste disposal sites."

I think we're sort of caught in that particular definition, so it's the definition that's our problem.

Mr Offer: I have one other question, if I may. I have been told that the current wording of Bill 62 would result in this situation: There are now on the Niagara Escarpment landfill sites that are closed that may in time require some remedial work on them. If Bill 62 were passed, that remedial work necessary to protect the environment could not take place.

Ms Little: As it stands now, it could not. My understanding from what Mr Duignan said was that his amendment would then permit this, because there are a couple of landfill sites within the escarpment plan now—I think of one, for instance, in St Catharines—where I know they would be anxious to be able to do some recontouring and things of that nature. My understanding of what Mr Duignan said is that this would not be prohibited with his amendment.

Mr Offer: So it's your opinion right now that Bill 62 would not permit the remedial work?

Ms Little: Yes, it is.

Mr Offer: Mr Chair, just through the deputants to you and to Mr Duignan, it is absolutely crucial that we receive the wording to that amendment during the public hearing process so the concerns raised by the deputants here and others might be able to be addressed in a way that is satisfactory to all involved.

Mr Stockwell: Considering that most of the salient points made by the deputants were directed towards the amendments, it makes it very difficult to even ask a pertinent question, not having been offered the opportunity to not only see but to read the amendments, I'll have to stand down my questions.

Mr Duignan: I'm sorry that the amendment isn't here. I wonder if I could get the clerk to clarify where my amendment is at this point in time.

Clerk of the Committee (Ms Donna Bryce): It's not yet been filed with my office. I understand that it's still with your office.

Mr Duignan: I could give a draft copy of my amendment to the clerk to distribute, bearing in mind it hasn't been fully approved by legal counsel yet, if that would help the members of this committee.

The Chair: Mr Duignan, just to remind you, you're not obliged to present your amendments at this time.

Mr Duignan: I know that.

The Chair: We need to produce those amendments at least two hours before the clause-by-clause, but if they're ready or as soon as they're ready, they're saying make them available. So that's fine.

Mr Duignan: I'm well aware of that fact, but to facilitate the public discussion here for the coming days, I think it's important if we have the amendment in front of the committee.

The Chair: As soon as they're available, we'll distribute them to you.

Mr Stockwell: With all due respect, Mr Chair, it's not often you get the amendments that are changing the face of the makeup of the piece of legislation that the deputants are then speaking to. Generally, you have people speaking to the legislation. It's not often you have them speaking to the amendments that no one's seen.

The Chair: Mr Duignan will make them available as soon as possible and everybody will have an opportunity to respond to them as well.

Mr Duignan: Again, I wonder if the NEC would clarify the difference between the natural area, the plan area and the planning area and what masses they comprise.

Ms Little: Sure. When the whole process started out, there was a planning area. You'll probably hear these definitions over the next few days. There was a planning area, which was the initial area that was looked at to see where a Niagara Escarpment plan would be. During the public participation process that took place over the next few years, that planning area shrank considerably by what, two thirds, Cecil?

Mr Cecil Lewis: Roughly, yes.

Ms Little: Yes. It shrunk by about two thirds to what is finally left that the Niagara Escarpment plan covers. The area that the Niagara Escarpment plan covers now is the Niagara Escarpment plan area. Within that plan area are the different designations that I mentioned. I suppose one could compare them to zoning bylaws, where you have different areas, where one type of use is permitted, another type of use and so on.

The escarpment natural is certainly by far the most rigorously controlled. They descend I guess in protective measures from escarpment natural through protection to rural, minor urban, urban and so on. So the natural generally encompasses the actual face and brow of the escarpment, the streams and stream valleys. Protection is the area immediately adjacent to the natural area in most cases and then they spread out from there in descending order.

Ms Margaret H. Harrington (Niagara Falls): I would like to briefly comment. First of all, thank you very much for your presentation. I represent the city of Niagara Falls, and as you know, that is one of the areas where we have started composting leaves in the fall and other strategies of that type. We are using an area which is part of our landfill, which is in the Niagara Escarpment. So we have had to go through the process that was previously there in order to have what we are now doing be legitimate.

Hopefully, our landfill site will be closed soon and another area far away from the escarpment—we're looking at various areas in Thorold and the southern part of the peninsula as a landfill site in the future for the Niagara region. I just wanted to mention that the city of Niagara Falls is one of those examples that you cited where we are trying to improve the landfill and we'll have to utilize some of the ideas you just mentioned.

Ms Little: Yes. Those were the things we didn't want to preclude.

The Chair: Mr Murdoch, we'll come back to you, because the Chair is lenient of course, but one or two questions max.

Mr Murdoch: I understand and I appreciate that, Mr Chair. I had a call from my office and I had to go there. I missed your presentation and I'm sorry.

We'll go back to the question you answered for Noel then. We have the Niagara Escarpment plan area, which includes all the different things we talked about, the protected, the natural and the rural. I assume this bill then is covering all those areas.

Mr Duignan: I asked the same question.

Mr Murdoch: The member didn't understand that and he made the bill. That's why I'm a little concerned, when the person who introduced the bill to this House doesn't understand what he's introducing.

Mr Duignan: Especially from you, Bill, who hates the NEC.

Mr Murdoch: I guess I'll go to you people then, since we can't ask him any questions. Mr Chairman, would you like me to ask him?

The Chair: No, Mr Murdoch. Don't be provocative, however.

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Mr Murdoch: I'm not being provocative. I'm just telling you what actually happened. A member introduces a bill and doesn't understand it.

Being that you know our area in Grey and Bruce, and we have a large area compared to what they have in Halton and different areas down south, this plan now covers a rural area. Could you see a problem with a waste disposal system in some of the rural areas? You've got to realize it covers a lot of Grey county and Bruce county. In your estimation, would you see a problem with one maybe in a rural area?

Ms Little: No, I don't, Mr Murdoch. Perhaps I could respond this way. I have another hat too. Before I was chair of the Niagara Escarpment Commission I was on the Burlington city council for 15 years and Halton regional council for 10. I point out that Grey has 14.2% of its land within the escarpment plan; Halton has 22.8%. For those who have been around for several years, you'll know Halton was sort of a guinea pig in the waste disposal site-environmental assessment program.

I started on Halton council in 1979, and when I left at the end of 1988, we were just getting through the hoops. We did succeed in getting a landfill site outside of the Niagara Escarpment plan. The interesting part of that is that there were two candidate sites in the running: One was right outside of the Niagara Escarpment plan, and the second was not in the escarpment plan but it was in the escarpment planning area. I think it was intended to be in the Niagara Escarpment plan, but the parkway belt legislation went through first and picked up some of the more sensitive areas, in the Halton region anyway.

The interesting thing was, those were the two candidate sites before the Environmental Assessment Board. The one that's still in the escarpment planning area was eliminated because of safety hazards. The one outside of the escarpment plan area was the one that succeeded and there were megamillions of dollars spent on that environmental assessment.

I don't think you'll have a problem, Mr Murdoch, and I think you'll probably find it cheaper, because we've found that a great part of the escarpment has problems for landfill sites.

Mr Murdoch: But you're saying it might be okay in the rural area?

Ms Little: It depends on what we're talking about; not the escarpment rural designation.

Mr Murdoch: That's what I mean.

Ms Little: In the rural areas of Grey county, yes, but not in the escarpment rural.

Mr Murdoch: No, no, I'm talking escarpment. We're talking strictly escarpment plan area here.

Ms Little: No, I don't see it in the escarpment plan, period.

Mr Murdoch: You don't see this bill then as just something to solve a problem down in Halton Hills or down in Halton?

Ms Little: No. Halton already has a landfill site. In fact, as I said, through all of these years. It was just approved, but it's outside of the plan area.

Mr Murdoch: You don't think this is a bill just to cover that? You think this bill then should cover all the Niagara Escarpment plan area?

Ms Little: Yes, absolutely. I'm saying I don't see a problem in other areas. If Halton was able to achieve a landfill site without going into the escarpment plan area and was able to do it well, I don't see that as being a problem for other municipalities either.

Mr Murdoch: I guess we do in our area and find that you're too restrictive now. You're talking about the different areas, but Halton is not as big as Grey county either. So if you want to twist figures around, I'm sure you can give me the figures the other way, how many hectares there are in Grey county compared to how many hectares there are in Halton, but that's not the point. The point is that this bill encompasses the whole area, which is the protected, the natural and the rural.

Ms Little: Yes, it does.

Mr Murdoch: I'm saying that it doesn't need to go into all those areas. Maybe just the natural area should be protected and we don't need to get into the rest of it.

Ms Little: I guess my response to that would be that Grey county has—you mentioned it was a very, very large area, larger than Halton. Fourteen per cent of Grey county's land is within the escarpment planning area. Therefore, 86% of a very, very large area is outside of the Niagara Escarpment plan area.

Mr Murdoch: But there's also a great farming area up there that we don't want to put our dumps on.

Ms Little: It's a beautiful area.

Mr Murdoch: That's right, and we can't do that either. So you see, when you add them all together, there isn't too much area left. A lot of the rural area on the escarpment plan is land that's not, in my estimation anyway, any good for anything, other than maybe some severance and some houses on it. Or it may be a landfill site. So you see, you can twist figures around but you've got to look at the area.

When a member introduces a bill that covers the whole thing, then he's got to take into consideration that we're not the same in Grey and Bruce as they are down in Halton. Unfortunately this bill doesn't do that. It just sort of takes the whole area. So I have very deep concerns about it.

The Chair: Mr Chiarelli, very briefly.

Mr Chiarelli: What is your understanding of any strong opposition to this legislation, if any exists, and how would you address those concerns of the people who are opposed?

Ms Little: Perhaps I'm the wrong one to ask, because I'm not close enough to have heard whether there is strong opposition. Of course, living in a local area, I would hear local comments.

Mr Chiarelli: You haven't heard of any opposition to the bill at all?

Ms Little: No, I haven't, but I can tell you that when

we went with our Niagara Escarpment plan amendment 52, really the only group that was opposed at that time was the waste industry. The public was very much in support of it. The ministries themselves were in support of it. This is very similar I think to amendment 52.

The Chair: Ms Little, thank you, and thank you, director and assistant director, for coming today to make your presentation to us.

TOWN OF HALTON HILLS

The Chair: I would like to invite the town of Halton Hills to present. Mr Miller and Mr D'Agostino, welcome. Perhaps one of you can introduce the third person who is there.

Mr Russell Miller: Thank you very much. Mr Chairman and members of the committee, I have with me today, to my left here, Steve D'Agostino of the law firm of Thomson, Rogers, for the town of Halton Hills. Next to him is Ralph Crysler, an engineering consultant who's been hired by the town of Halton Hills as well.

Mr Stephen D'Agostino: And, if I may, Mayor Miller.

Mr Miller: And I'm Mayor Miller. It's a pleasure for me to have this opportunity to speak to you today about Bill 62. I am in support of it or any amended form that would eliminate landfilling within the Niagara Escarpment.

The town of Halton Hills is out from Toronto here to the west, about 35 miles north of the 401. We have a population of about 35,000 and we're made up of the town of Acton, the town of Georgetown and Esquesing township. We're about 120 square miles in size. The Niagara Escarpment runs from the southwest corner to the northeast corner, making up about one third of our town. The Niagara Escarpment divides the two urban municipalities.

The Niagara Escarpment is important to the town, as it establishes the character. The rock formation underlying the escarpment provides us with our water supply. The town of Halton Hills is rather unique, with a large amount of the Niagara Escarpment, the Credit River, the Black Creek and the Silver Creek and its many hills and valleys.

We're noted for our tourism. We have many cottage industries within the Niagara Escarpment and our small villages. I'm sure that you've all heard about the Olde Hide House in the town of Acton. We have several hundreds of thousands of people who visit us on a yearly basis.

The town of Halton Hills has a long record of protecting the escarpment. We have worked hard to bring our official plan into conformity with the Niagara Escarpment plan and we have worked hard to keep our urban development outside the plan area. We attended the hearings with the Niagara Escarpment Commission on NEPA 52, which Mrs Little spoke about.

I personally have been a resident of Halton Hills most of my life and I've represented the municipality for 30 years as an elected official. My ancestors were settlers on the escarpment. I was raised on the escarpment and I know the value of the escarpment to the community.

It is the wetlands, the many ponds and many springs that come out of the Niagara Escarpment, which make this vital to the residents of the town of Halton Hills and to many other municipalities along the escarpment. The unique characteristics of the Niagara Escarpment make it very valuable to the cities, to the towns and to the farming community, from Niagara Falls to Tobermory.

I know from my experience that these springs and ponds and wetlands supply the groundwater for the drinking water that supplies these towns and cities. That's something we must be very cognizant of. We must ensure that we do not destroy the drinking water for many thousands of people today and for future generations.

Landfill is a serious business. No matter how well they engineer it, there can be problems. There are odours, methane gas, poisonous leachate, noise, truck traffic, litter and always the threat of rodents and seagulls.

Niagara Escarpment landfill sites are quarry sites. From the Steetley quarry hearing that is presently before the joint board, the evidence is that a landfill located in a quarry will require care and active rehabilitation for 300 years after it closes.

The rock which forms the escarpment is highly fractured. It is capable of containing poisonous leachate without significant engineering. As we all know, engineering always brings with it the risk of an engineering failure.

The Environmental Assessment Act is meant to ensure environmental protection. The region of Halton was a pioneer, and we speak from experience. The Environmental Assessment Act has a serious flaw: It requires the proponent of a landfill to consider sites within the escarpment when the escarpment is part of the search area. In the region of Halton search, two escarpment sites made it to the last round and one of those two preferred sites was located in the city of Burlington, which Mrs Little spoke about earlier. I am told by the staff that there is no way to simply screen out the escarpment without some type of an amendment.

1440

We would be appalled if a proposal came forward to landfill Lake Ontario; we would be appalled if a proposal came forward to landfill an area of natural and scientific interest. We are forcing consideration of landfill in the escarpment, which has been designated as a world landscape feature.

There's no need to fill existing quarries with garbage for rehabilitation. I've seen personally what has taken place along the escarpment when nature was allowed to rehabilitate sites that were quarried for manufacture of lime in the early 1900s. After approximately 20 years, they were almost restored to their natural beauty just by nature and they had little or no effect on the many springs and streams within the escarpment.

To allow landfilling within the escarpment has the potential of pollution. With the large amount of water that is supplied for the use of thousands of people, it would be foolish to take such a risk. I'm not just speaking about Halton Hills; I'm speaking about the entire Niagara Escarpment, which I know quite well.

This is a time of restraint, a time when we seek to achieve world class. We are spending money considering landfills on the escarpment when we all agree they should not go there. Halton Hills has been spending money defending the escarpment from landfill for 20 years, when originally Fred Gardiner first proposed the haulage of garbage by rail to the Acton quarry. The present application by the RSI for landfill in the Acton quarry has cost the town of Halton Hills approximately \$800,000 to try and discourage landfilling by a private enterprise of a quarry that was rejected by Halton region for its own purposes.

It would seem to me that without change in the law, such as Bill 62 or an amendment, not only the town of Halton Hills but any municipality with a quarry along the escarpment could be spending millions of dollars in defence of the Niagara Escarpment. The Acton quarry and our municipality have had many applications and we have continually had to supply information at large cost to defend our position against the possibility of having our groundwater polluted. Without this amendment—or something like this amendment, because I know you're considering the possibility of amendments to Bill 62—there is no assurance that applications cannot be resubmitted time and time again, costing the taxpayer large amounts of money.

That is what we're undergoing today. We have spent money that we should be spending for our people, for our town; we've been spending it because large corporate businesses come in and want to destroy that natural feature. It doesn't have to be rehabilitated by putting landfill in. It's just like anything. Many applications we get for rehabilitation is landfill or houses. It has to be profit-making. Why can it not just be left for nature to restore to its original use?

The council for the town of Halton Hills would like you to give support to Bill 62 or any amended form, to ensure that future generations will always have fresh water. We, like the other counties and regions, have many excellent farms and these farms rely on a pure water supply. We know that with the technology today, other locations and types of landfill disposal would make far more sense than allowing any type of landfilling within the escarpment.

You will hear lobbyists and others suggest that landfill is a good way to rehabilitate worked-out quarries. We have major quarries on the escarpment. Quarries are an important source of jobs and aggregates. However, we all recognize that to protect the escarpment, no new quarries will be approved. Quarries do not emit poisonous gas and leachate. They do supply jobs and a resource that is necessary. But I assure you that the best way to rehabilitate these quarries is to allow nature the opportunity to do it without landfilling.

The quarries that are there may be yesterday's mistake. To poison the escarpment for hundreds of years by allowing them to be used for landfill purposes would only perpetuate the harm and make a mockery of this very special place within the province of Ontario.

In conclusion, we all must be responsible for the disposal of our garbage, but we must also be responsible

to ensure that we have a good supply of fresh water for future generations. We are responsible for preserving this natural feature of international proportions.

We are fortunate in southern Ontario to have a rock formation that is as beautiful as the Niagara Escarpment. I have lived either on it or close by it all my life and I recognize the unique beauty of the escarpment. I'm here today asking for your support to find a way to stop landfilling—and I say landfilling—within the escarpment, not just because we have a proposal—and you gentlemen and ladies know that we have a proposal in our municipality. We've spent hundreds of thousands of dollars to try and reject this. But it is because of our water supply. It is our only water supply and it's the water supply not only just for Halton Hills but for the town of Milton and many parts of Brampton, because we know that water travels underground. As somebody who has been around the escarpment for 60 years and understands it quite well, I would ask for you to give this very careful consideration. I'm prepared to answer questions, as is Mr Crysler and Mr D'Agostino. Thank you very much for this opportunity.

Mr Murdoch: Welcome, Russ, to our committee here, and the rest of you. You spoke mainly about landfill and I notice this bill says, "extend waste management systems." Unless there's an amendment to that, I understand that would be any kind of a waste management system, which could be a septic system. You're agreeing with this bill; I'm just wondering, do you agree with that or are you just mainly concerned with the landfills?

Mr Miller: Thank you, Bill; it's nice to see you again. Sitting in the audience, I was listening very closely to what was being said here. That's why I tried to get the understanding across that I am concerned and my municipality is concerned about landfilling. We're concerned about landfilling because we do not feel it is appropriate. Many of us do not feel it's appropriate in any form—there are other ways—but we do not feel it's appropriate within the escarpment.

Because we get our water supply from the ground, we are very, very concerned on what would happen if the groundwater got polluted. It has to be a concern of anybody else here who is sitting around this table and who knows that we are here representing, yourselves and myself, people within our communities, within our province, that we cannot continue to take chances where we may pollute water that would cost not only my municipality and other municipalities but the people of this province to try and get water to these people. I've seen that sort of in Mr Stockwell's comment about, "Here are protectors of the purse." We have to be here as protectors of the purse, but if we pollute that water, somebody is going to have to restore it some way, maybe by bringing it down from Georgian Bay, and I'm up there in your area quite often.

Mr Murdoch: I know. Maybe Noel will explain, when it comes to their turn, what he means by "waste management systems," then, and see if he's going to amend that or not.

The Chair: Moving on, Mr Duignan.

Mr Duignan: Thank you, Russ, for coming down this

afternoon, knowing your busy schedule, and given that I think tonight is also council. What is it about landfills and the Niagara Escarpment that brings you to Queen's Park today?

1450

Mr Miller: As you're well aware, I have been involved in fighting landfills on the escarpment for many years, strictly because of the water, strictly because I think there are better ways of disposing of garbage.

When we were searching in Halton region for a landfill site, we managed to stay away as much as we could from the potential of polluting the groundwater. We have established a landfill site outside the escarpment area. I feel very strongly and I have spoken many times, and long on many occasions, about the possible pollution of the water. I know the fracture of the escarpment. I was raised on it. I visit it regularly. I've lived close by it.

I have the greatest fear of the pollution of groundwater through the escarpment. I'm no engineer, and I'd like to turn it over to Ralph to answer that because, in my experience, which is very limited, I have followed how they line landfill sites with clay and how clay is a much better base.

Mr Ralph Cryslar: The concern with groundwater on landfills is normally seen to be the leakage of leachate from the landfill off the site. Leachate is a pretty potent liquid. Its primary source is the rain water precipitation which filters down through the landfill itself and on its way through picks up the products of decay; it picks up incidental non-degradable items that are in there such as paints and oils and solvents, all those things we're not supposed to put in landfills but I believe they get there.

The leachate, in many cases, is so strong, the sewage is so heavily contaminated, that it has to be pre-treated before it can even be handled in the normal sewage treatment plant.

Most landfills have a liner under them or are built into a clay material which is very tight as far as leakage is concerned. However, as the mayor has pointed out, engineered systems do have the unfortunate habit, from time to time, of failing and so in landfill design we provide contingency measures.

The most common form of contingency measures is down-gradient purge wells. If you put a purge well into granular soils or into the clay tills, you can be fairly sure of recovering the leachate which has escaped. But what we're talking about in a quarry site, especially along the escarpment, is a site where any leakage goes into the limestone or, more correctly, into the fractures and pathways within the limestone. These pathways are very indeterminate and I would have great concerns about trying to guarantee the recapture of escaped leachate in a limestone situation because of the problems of the various flow paths. Does that answer it for you, Russ?

Mr Duignan: In summary, directed at yourself: In your expert opinion, then, a rock formation such as the Niagara Escarpment is not a very appropriate place to site a landfill site.

Mr Cryslar: I agree with that, because of the problems of trying to recapture leachate which might escape.

Mr Duignan: Is there time for one more question?

The Chair: There is one more moment, if you want it.

Mr Duignan: Very briefly, you touched on the whole question of the amount of dollars your city has spent on the whole process of defending the town against landfills on the escarpment. What percentage of the tax base does that represent?

Mr Miller: You caught me off guard; I just can't tell you. Maybe our solicitor could.

Mr D'Agostino: In 1992, the town of Halton Hills was required to put together a cost brief in connection with the RSI proposal and at that time, in that one calendar year, the consulting fees associated with the landfills, paid for by the town of Halton Hills, represented 3% of the taxes raised for municipal purposes.

Mr Duignan: You're saying 3% of the local taxes goes towards costs of yourself and the consultants and the legal costs.

Mr D'Agostino: To be clear, that's excluding the portion raised for school boards; 3% for the municipality's purposes.

Mr Offer: Thank you for your presentation. What I'd like to get from you is whether you have any concerns with the bill as it is presently worded.

Mr Miller: When I first looked at it, no. But I can see what has been said by many other people here, that there is a possibility that it is too restrictive. I would have to agree with that. We're not here to stop blue box proposals, small composting, recycling.

I feel that we are here today and I know that am here today to try and get something that would restrict, would prohibit landfilling within the Niagara Escarpment from Niagara Falls to Tobermory. Speaking to one of the staff here from Niagara Falls prior to the meeting, I was discussing that with him, and I had a feeling that would probably satisfy a lot of people, maybe even Mr Murdoch, whom I've known personally for some time. We've discussed the Niagara Escarpment on many occasions.

That's what I would like to see. I feel that landfilling, putting garbage into that fractured rock of the escarpment, would be a mistake. It's the landfilling that is my major concern.

Mr Offer: The concern which I find is one that I believe I have already indicated, and here we have another deputation which, I think in fairness, speaks in support of the legislation but also has indicated that some changes are going to be needed to the legislation in order to address some of its ongoing concerns.

My problem is that we must have that amendment prior to the end of these hearings in order to make certain that the concerns that you have raised and that the commission itself have raised have been addressed. It would be very difficult for us, in fairness, to pass judgement on a particular piece of legislation when we hear people speaking in support, with a "but" to it, and we don't know if an amendment is going to be presented, which will carry, that will meet your concerns.

Have you, as a town, dealt with any possible amendments to the bill that you might wish to share with the committee?

Mr Miller: I have spoken to Mr D'Agostino on this. Have you got anything, Steve, that you can add to this?

Mr D'Agostino: I guess what I can say is this: As lawyers think on paper a lot better than they think orally, and a number of us have crafted from time to time some words, there's no magic to any words that we have put down in terms of amendment, but the kinds of words that the town's been looking at are simply tracing the words from the Environmental Protection Act dealing with landfill, "deposit," "dispose of," and getting rid of the rest of the words in the act, because basically what the town is concerned about is landfill. So the kinds of words we've been talking about would take those words, "disposal," "deposit," from the EPA and just drop them into the member's bill.

Mr Offer: If I can ask a question based on that suggestion, would that meaning, moved from the one legislation to this particular bill, meet the concern that has been brought to my attention, and that is that existing landfills, closed and potentially in need of some repair, would not be able to get that repair as a result of this bill?

Mr D'Agostino: It's my view certainly that if you made that kind of amendment, you achieve the ends of St Catharines, Niagara Falls and others that have the remediation problem.

The issue is simply this: In the original drafting of Bill 62 there's a prohibition against waste disposal, which is defined to be a whole bunch of things and includes the remediation measures. It's simply the depositing of new waste which is really at issue here. So certainly that kind of language can achieve, in a very simple way, the needs of virtually all the municipalities that I understand have expressed some concerns.

1500

The Chair: Thank you very much. We're out of time. I want to thank all of you for coming here today and making this presentation.

Mr Stockwell: Did Noel get a copy of the amendment yet?

The Chair: He is working on it.

Mr Stockwell: Well, this is crazy.

The Chair: It's coming within the hour, Mr Stockwell.

Mr Stockwell: We're asking questions on an amendment that nobody has seen.

The Chair: I realize that. Members are speaking to what is in front of them. You're right, the amendment that is coming is not yet here, but within the hour it will be, and then people can fit their comments into that. I understand what you're saying.

Mr Stockwell: This is no way to run a railroad.

Mr Duignan: I did offer earlier to distribute a draft copy of my amendment.

Mr Stockwell: Look, what do you remember about it? We'll write it down.

Mr Duignan: I've got a draft you could circulate.

The Chair: If you have a draft you think you might circulate, wonderful.

Mr Duignan: I did extend that offer.

HALTON REGION CONSERVATION AUTHORITY

The Chair: I'd like to invite the Halton Region Conservation Authority, Mr Murray Stephen. Welcome, Mr Stephen. You have half an hour for your presentation. You can begin any time you're ready.

Mr Murray Stephen: This is Mr Martin Campbell. He's legal counsel for the conservation authority from the firm of Beard Winter. Just for the record, my name is spelled S-T-E-P-H-E-N. So that could be a correction that's on the agenda.

I'm here representing the chairman and members of the Halton Region Conservation Authority. I'm the general manager of the conservation authority. There was a sudden passing of a former chairman over the weekend, and unfortunately that has caused a number of problems for other people to be here today. Mr Brock Harris, who was a former chairman, quite well known throughout our area, passed away. So unfortunately our other representatives aren't with me today.

The Halton Region Conservation Authority represents a watershed consisting of 366 square miles. The watershed includes all or portions of the municipalities of Burlington, Oakville, Milton, Halton Hills, Dundas, Flamboro, Puslinch township and Mississauga in various percentages ranging from 100% down to 4% in the case of Mississauga. The authority has been in existence since 1956 and has a current resident population in the watershed of 306,000 people. The authority has a mandate to establish and undertake a program designed to further the conservation, restoration development and management of our natural resources.

The framework around the natural resources management program in the Halton watershed is based on the management of the drainage basins consisting of four major watercourses: the Grindstone Creek in the west, the Twelve Mile or Bronte Creek, the Sixteen Mile or Oakville Creek and the Fourteen Mile Creek along the Oakville-Mississauga boundary. In addition, there are 12 other watercourses and drainage basins that originate in the Niagara Escarpment in Burlington and in the tilled plains in Oakville that ultimately discharge into Lake Ontario.

One of the major landforms and resource features that dominates the landscape in the Halton watershed is the Niagara Escarpment, and it has been the major focus of the authority's effort in resource management since 1956. The location of the escarpment in relation to the watershed is related in almost every aspect to the integrity of the authority's program, and therefore the planning and land use activities that occur within and around the escarpment are of paramount importance to the authority.

The conservation authority is a major land owner in the escarpment. We own approximately 4,100 acres of land. The land holdings represent the predominant landscape, the most environmentally significant characteristics of the escarpment and areas that warranted public

ownership in order to protect and preserve their attributes for the present and future residents of Ontario.

The authority has been instrumental in developing criteria and standards that were ultimately included in provincial legislation, such as setbacks for aggregate extraction that exist under the present aggregate extraction legislation. For example, in 1956, long before there was pits and quarries control legislation and other provincial legislation, the conservation authority acquired and also through agreements had setbacks of 300 to 350 feet along the face of the escarpment for non-extraction and non-disturbance of the face of the escarpment.

The Niagara Escarpment constitutes the headwaters for surface and groundwater supplies throughout the area. There are no fewer than 14 licensed quarries and gravel pits currently operating within the escarpment in our watershed. Their licensed area covers approximately 3,300 acres of land and their locations are represented on the watershed map that has been handed around for your information.

The authority has noted with concern that the Niagara Escarpment plan has very limited, if any, jurisdiction regarding the licensed aggregate operations. Environmental impacts and the after-uses of these sites are matters that have to be addressed either through a site-by-site agreement or through a site plan filed under the mineral resources aggregate legislation.

An attempt to establish a sanitary landfill in these aggregate extraction sites is a matter that the authority has not supported in the past and will not support in the future. The prospect of using any of these sites for that purpose is to expose the majority of the surface and groundwater supply for this region of Ontario to an environmental risk of considerable magnitude.

Bill 62 has considerable merit and warrants support and adoption by the province to eliminate landfills as an acceptable after-use under the pits and quarries control act and the mineral resources act.

The escarpment is too fundamental to the long-term objective of protecting our natural resources features, and any proposal that ensures that the aggregate operations, upon their completion, will be rehabilitated to an after-use that does not include the establishment of a sanitary landfill must be enacted. To justify anything other than this is to ignore the very essence of the escarpment, its attributes and the consequences for impacting the delicate balance that is in the best interests of the environment, including the people.

The map that has been handed around to the committee represents the existing licensed areas that are in our watershed. Obviously, it's quite apparent that the number of licensed quarries that we have are prime targets for landfills. As recently as 1989, the authority had been reviewing and had to comment on even an application by Ontario Hydro for use of one of these sites for the disposal of fly ash. These keep coming up, time after time, as an after-use or as part of a rehabilitation scheme in the quarry and in the aggregate legislation.

We have a great deal of concern that there are major weaknesses in the legislation now and we have to come

to grips with this type of issue; otherwise we're going to be back time after time in front of various panels and hearings boards, and that's to the benefit of no one.

I'll stop it there and take any questions from the committee.

Mr Duignan: Of the existing quarries and pit sites that exist in your jurisdiction, how many of them will be potential landfill sites at this time?

Mr Stephen: At the present time, I don't think there are any of them that you could exclude as being potential sites. That's the problem.

Under the current legislation, under the mineral resources act, you do not have to stipulate after-uses. There are two that are on this site. Site A is the acting quarry site, and there have been attempts made on site E in the past. The way the authority addressed that was that we forced a specific agreement on that site that defined the after-use, which was addressing the water situation in the escarpment.

Mr Duignan: What acreage are we talking here?

Mr Stephen: At the present time 3,300 are under licence, so when they're all worked out, landfill is a possibility in all 3,300 acres.

1510

Mr Duignan: One of the most common complaints I get in my constituency office at this particular point in time is around the whole question of water and taking water from the escarpment such as, for example, the Acton quarry. What type of problems are you experiencing now from the whole question of water supply from the escarpment to the communities?

Mr Stephen: In every quarry operation, gravel pit as well, there's a water-taking permit that will be involved in the operation of that. Every time there is an excavation made in the ground, there is going to be a drawdown in the groundwater. The cone of influence from the site of the excavation goes well beyond the property boundaries of the licensed area. The geology and the profile of that groundwater will fluctuate according to the depth, volume of water in the surrounding area and the rate at which it is diverted or pumped.

In the case of the Halton conservation authority we have several examples where we have encountered changing of whole drainage basins by diverting surface streams or by the lowering of the water table that went well beyond the limits of the licensed area. A major complaint that we have is the process through which those water-taking permits are issued, examined, evaluated, and the environmental impacts identified under the current process. You introduce a landfill on top of that, you have introduced another major environmental concern even on top of that situation.

I guess I will finish by saying that the water situation in the quarries is still an unresolved issue in many of the locations in our watershed.

Mr Duignan: What's the water-taking permit of the Acton quarry at this point?

Mr Stephen: It's up to and exceeds two million gallons a day, I believe.

Mr Duignan: And that's having an effect on the water table's surrounding areas?

Mr Stephen: Yes. The problem there is, that particular site divides the watersheds between the Credit Valley Conservation Authority in the Halton region, and the point of discharge for the water in the Sixteen Mile Creek watershed is going in Black Creek. That's a totally different drainage basin. You have to examine the effect and the impact of these water-taking permits and ensure you're not having over the long period a substantial impact on the water supply for an entire community.

Mr Duignan: If we're pumping two million gallons of water a day out of the Acton quarry and if the proposed landfill site is sited in the Acton quarry, that leads me to speculate that there's going to be one heck of a lot of water in that landfill site at any given time.

Mr Stephen: Yes, and that's on an average, too; that's not actual record of peak flows. When you've had snow melts and rainfall you can exceed that limit, but that's what's on the current permit at the present time at the Acton quarry: an estimated volume of two million gallons per day.

Mr Offer: I'd like to thank you very much for your presentation. I think the information which you provide is extremely useful and helpful for us as we go on in the particular bill.

While you were making the presentation, an amendment was being circulated, a proposed amendment that the member is going to be moving based on this particular bill. After a brief reading of the amendment, apparently, notwithstanding the concerns that you have raised, the bill is going to be amended, which will permit in certain circumstances a continuation of waste disposal and waste servicing on the Niagara Escarpment. I would like to get your impression, if you have the amendment before you, of that which has been circulated by the member.

Mr Stephen: I'll ask Mr Campbell to answer that.

Mr Martin Campbell: Mr Offer, we just got it.

Mr Offer: So did I.

Mr Campbell: It's hot off the press, so you'll forgive me. Subsection 1(1) repeats in effect the thrust of Bill 62 as it now stands. As this amendment is proposed, section 27(3) is added, which contains a number of exclusions. I note with some interest that the subsection right at the bottom of the page would address the concerns of Mr Stockwell about lawsuits and so on. I think to that extent it's a valuable contribution to this.

I must confess that proposed subsection 27(3) is difficult to understand on the very short reading. It appears that it removes one of the concerns we had over the breadth of language in Bill 62, as put forward earlier. It creates certain exceptions; the exceptions include transfer stations, recycling facilities, and composting sites which receive waste only from the local municipality. That would appear to, in effect, allow local municipalities to continue operations. "Use, operation or alteration of a waste disposal site, which site is approved before this subsection comes into force," would at first glance—and don't hold me to this because it is just at first glance—allow improvements and amelioration to existing sites

where there may be problems. There are limits on what can be done.

I think to that extent, this is an improvement on Bill 62 as originally drafted. Whether this goes the full route, whether this will ultimately achieve the objective which is contemplated in Bill 62, is hard to say on very short notice. It seems to be an improvement.

Mr Offer: The difficulty we're placed in at this point in time is now we have just heard the deputation, very strong in support of the legislation, and as one is speaking about the legislation, amendment is being moved throughout the committee that basically is seemingly moving against, in some way, what was being said by yourself.

I certainly have not had time to digest the wording of this amendment and what it means. I am very sensitive to the previous presenters, who spoke about the need for some change to the bill, and I do not know whether the amendment I am looking at is that which has been envisaged by the previous presenters as the necessary change. Mr Chair, what I hope we can do is copy this amendment for those in the audience and we will be asking some questions, not only in committee but outside the committee, in order to see what the reaction is to that.

Again, I thank you for the presentation. It was very important and the difficulty we have is you were making a presentation on a bill that, as you were making the presentation, was being changed. I don't know if it was being changed in the way you particularly want it to be changed, but I thank you.

Mr Stephen: Could I make one short comment to add to that?

The Chair: Sure, go ahead.

Mr Stephen: What we are in support of at the Halton conservation authority and, I would suggest, all of the conservation authorities along the escarpment, is that we want legislation that is clearly going to say that a certificate of approval will not be issued for a new landfill that is going to utilize aggregate extraction sites in the escarpment as the means to solve a sanitary landfill problem in the province of Ontario. That's what we want, that's what we're in support of and that's what we would hope the Legislature for the province of Ontario will address.

Mr Duignan: Point of order, clarification, whatever.

The Chair: I would like to give you an opportunity at the appropriate moment to do that, rather than just interrupting here. Mr Murdoch.

Mr Murdoch: I was going to say—it's okay then.

The Chair: Mr Murdoch, you go right ahead. Mr Duignan will find the opportunity to make the point.

Mr Murdoch: Okay, thank you, Mr Chair. I also would like to thank the conservation authority for coming here, Murray, and giving your presentation. I know and understand what conservation authorities are all about and appreciate the fact they're in existence.

I have other concerns on the bill and what you just said there about how you'd hope this bill would say that there wouldn't be landfills on quarries within the Niagara

Escarpment, but it doesn't say that. That's the unfortunate part about this whole bill. It was one paragraph and really didn't say a heck of a lot, or you could read a lot into it. That's where I have concerns because, if you let the Niagara Escarpment Commission loose with something like that, they'll interpret it any way they want. That's what they've done with their own plan and they don't seem to follow the rules and they decide what they want to do when they meet. They actually have more power than the Ontario Municipal Board, and that's scary.

1520

I want to ask you, though, what you think when they talk about waste management systems. We, as I said, in Grey and Bruce counties have a lot of area on the Niagara Escarpment plan. What that could do is eliminate septic tanks, if you say that a waste management system includes a septic tank. I want to know, do you think it does or not, because it's open for interpretation.

Mr Stephen: "Waste management system" is, according to the government's own definition, under the environmental protection legislation. I think the problem is that either in crafting that legislation, for whatever reason, you never defined what was meant by "landfill." Therefore, my response back to you is that you need to deal with the definitions, how you've crafted those definitions, and how you interpret and apply those definitions in your current provincial legislation, and not look to an agency such as a local conservation authority or a municipality to answer those problems for you.

Mr Murdoch: Okay, I didn't expect you to give me the right answer. I just thought what you thought, but that's fine. What will happen is, we'll have the Niagara Escarpment interpreting and it has its own interpretations of different things. We can get into those, but we won't. We wouldn't have time to explain all those. It seems persons like yourself and some of the other presenters were worried about landfills, but this bill can go way beyond that if we give control to the NEC. That's where I have very deep concerns about giving them any more control than they've got now.

The Chair: Mr Stockwell, any questions? Very well, thank you very much for coming and thank you for your presentation.

Mr Stephen: Thank you. Mr Chairman, I have a large map here. Do you want me to leave that for reference purposes?

The Chair: That would be fine, yes. Thank you. I would like to invite the regional municipality of Halton, Mr Blair Taylor, solicitor.

Mr Duignan: On a point, Mr Chair: I just wanted to say that the proposed amendment in front of the committee is in a draft stage only and in fact it does not alter the intent of Bill 62 but seeks to clarify some of the issues and bring it more in line with amendment 52, as found in the particular section 27 of the act.

Mr Stockwell: Can I ask a question, Mr Chair, just a quick clarification? It's in a draft stage that has been sent, as I understand it, by your office to the Attorney General's office maybe—I'm not sure—and all you're working on now is the legalities of this motion.

Mr Duignan: That's correct.

Mr Stockwell: But this should basically form the new piece of legislation.

Mr Duignan: That's correct.

The Chair: When the official copy comes, then it can be moved into the record. At the moment it's just a draft.

Mr Duignan: It's just a draft. I'm not moving this right now until we get—

The Chair: Obviously. Very well, thank you. Mr Taylor.

Interjection.

The Chair: It's not been moved.

Mr Stockwell: It's not been moved?

The Chair: No.

REGIONAL MUNICIPALITY OF HALTON

The Chair: Please begin, Mr Taylor. Would you introduce your colleague.

Mr Blair Taylor: I'd be pleased to. My name is Blair Taylor and I appear on behalf of the regional municipality of Halton. With me this afternoon is Mr Robert White. Mr White is a senior member of the management team in the planning department at the region. He's been with the region since 1974. He's given evidence before various provincial tribunals, including the Ontario Municipal Board, and he is very familiar with the Niagara Escarpment Commission.

Our presentation this afternoon will be divided into two parts. While ideally it would be best if each member of the committee would be able to personally visit the Niagara Escarpment, obviously that's not possible this afternoon. Therefore, on behalf of the region, we would like to present in visual form the significance of the Niagara Escarpment in and to the region of Halton. Following Mr White's presentation, I will provide additional comment with regard to the context within which Bill 62 should be examined. Since we're dividing this into two parts, if questions could be held until we've completed both parts, that would be appreciated.

If we could, I would like to just briefly turn out the lights and start up the projector and I'll turn it over to Mr White.

Mr Robert White: The region of Halton, the city of Burlington, the towns of Milton, Halton Hills and Oakville and the Halton Region Conservation Authority have long supported the preservation of the Niagara Escarpment. In fact, many Halton residents believe the Niagara Escarpment Planning and Development Act is the direct result of the concerns raised and efforts made by many people who live and work in Halton.

You have already heard from the Niagara Escarpment Commission that the area covered by the Niagara Escarpment plan has been recognized by the United Nations as a World Biosphere Reserve. This world recognition speaks volumes for the wisdom and foresight of the provincial Legislature in 1973 when it created the Niagara Escarpment Planning and Development Act, as well as for the wisdom and foresight of the provincial cabinet when it approved the current Niagara Escarpment plan in 1985.

Despite the United Nations recognition of this truly world-class environment, we must not forget that the Niagara Escarpment plan area only covers a very small percentage of Ontario, perhaps less than 1% of the total province.

Having lived and worked in Halton for many years, I know the people of our region have very strong feelings about the Niagara Escarpment. The reasons for these feelings are easy to see. This slide is one of my favourites, as it shows Mount Nemo in Burlington.

The Niagara Escarpment is by far Halton's most prominent and important landscape feature. This feature, and the Niagara Escarpment plan, dominate the landscape, covering over 50,000 acres or about 25% of the region's total land area. The escarpment cliff face in Halton is quite pronounced. It virtually divides the region in two from north to south, starting first in Halton Hills and then winding through Milton and Burlington. The following slides show the cliff face at Halton's Rattlesnake Point, the Milton outlier and Mount Nemo. I think you will agree with me that the view from on top of the escarpment is quite impressive.

Besides its beauty, Halton's escarpment is critically important from a surface water and groundwater perspective. You have already heard from the Halton conservation authority that the source of many of Halton's streams is found on top of the Niagara Escarpment. These slides show typical escarpment ponds which lead to streams found throughout the Niagara Escarpment plan area. The quantity and quality of water from these streams is a major concern, not only because it gives life to the 38 environmentally sensitive areas located within Halton but also because it provides the drinking water for Milton, Georgetown and Acton.

There are numerous rural communities scattered throughout Halton's rural area, almost all of which depend on the groundwater that comes from the limestone bedrock and sand and gravel deposits located on the Niagara Escarpment. Halton and its local municipalities are becoming increasingly concerned with the possible pollution of the region's groundwater. In fact Halton is so concerned council recently approved funds to begin a comprehensive groundwater study.

There are over 20 environmentally sensitive areas located within the Niagara Escarpment planning area. Several of these wildlife areas have been identified by the province as provincially significant areas of natural and scientific interest. Many of these wildlife areas are the habitat of rare and endangered species as identified by the province's Endangered Species Act. Recently, 800-year-old trees were discovered on the escarpment. These trees pre-date Christopher Columbus and are possibly as old as the Magna Carta. The rarity of these trees, the fact that they survived and were found on the escarpment, only heightens the importance of this biosphere.

All this beauty and wildlife so close to Toronto has attracted tremendous interest from conservationists, tourists and residents. As a result, numerous parks, agreement forests and reserves have been established in Halton's escarpment plan area. Every year, thousands of people come to the region to explore the Bruce Trail,

hike old logging roads, stroll along boardwalks, relax beside tranquil lakes, tour in a historic Indian village or museum, play in a winter wonderland, take in some cross-country or downhill skiing or even experience the thrill of rock climbing. Reconciling all these competing interests has been the job of the Niagara Escarpment Commission, in cooperation with the other provincial bodies and municipalities, such as those in Halton.

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In 1978 Halton region adopted its first official plan. The Halton plan established a regional land use designation which protected the escarpment cliff face and lands within its vicinity. In 1980 Halton supported the proposed Niagara Escarpment plan at the hearings in Ancaster, Owen Sound and Burlington. In 1988 Halton's official plan was the first official plan to be brought into conformity with the current approved Niagara Escarpment plan. In 1992 Halton once again supported the Niagara Escarpment plan at the hearings on the Niagara Escarpment plan's five-year review.

Since 1974, the regional municipality of Halton and its local municipalities have consistently supported the commission in its effort to protect the escarpment in accordance with the purpose and objectives of the Niagara Escarpment Planning and Development Act.

Mr Taylor will now continue with the second part of our presentation.

Mr Taylor: Bill 62 doesn't come before this committee as an isolated or unrelated piece of legislation. Rather, in our view, Bill 62 comes to give statutory expression to the policy which underlies all environmental legislation and resulted in the approval of NEPA 52. In that regard, I would like to provide you with a brief overview of some of the environmental legislative initiatives that have occurred.

We're just about to put up an overhead which will take you back to about 1956. In 1956 we had the passage of the Ontario Water Resources Commission Act. In 1956, the Ontario Water Commission Resources Act established the Ontario Water Resources Commission, whose function was to construct, operate and distribute water systems and also to dispose of sewage.

You will see from this overhead that in fact in 1958 the Air Pollution Control Act was passed, and that act allowed the minister to fund, research and investigate air pollution problems and assist municipalities in drafting bylaws.

You'll see from the overhead that in fact between the years of 1960 to 1970 there was not considerable legislation on environmental matters, but with the onset of the 1970s, a number of pieces of legislation were introduced which had their roots in the 1960s. That legislation included the Waste Management Act, and that was an act that required landfill sites to have certificates of approval. In 1971 we have the Environmental Protection Act, and that encompassed both the Air Pollution Control Act and the Waste Management Act. In 1973 we have the Niagara Escarpment Planning and Development Act, followed in 1975 by the Environmental Assessment Act.

As we jump into the 1980s, you'll see that in 1981 the

province required municipalities to be subject to the Environmental Assessment Act. As well, the province toughened its standards with regard to environmental enforcement by establishing the special investigations unit at the Ministry of the Environment. In 1985, the spills bill, as it was then known, now part X of the Environmental Protection Act, was proclaimed. As well, regulation 309 was put into place with regard to the transportation of dangerous substances, or hazardous substances. In 1986 you have the Environmental Enforcement Statute Amendment Act, which increased environmental penalties, and also the personal liability for directors and officers was introduced.

In the 1990s, we have the hearing officer's report on NEPA 52. In 1992 that was implemented by cabinet order, and in 1993 we have the Environmental Bill of Rights.

That's an overview of the legislative context within which Bill 62 would fit.

I'd like now to take you back to 1973 and to look at the Niagara Escarpment Planning and Development Act. You will note that then, in 1973, the purpose of the act was "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment."

The chair of the Niagara Escarpment Commission, the first delegation this afternoon, noted in her comments that in order to implement section 2 of that act, section 8 of the act provided that a Niagara Escarpment plan was to be prepared and certain objectives were to be sought by the commission in preparing that plan. The chair mentioned four of those criteria or objectives. We'd like to have a look at these in totality.

The first is "to protect unique ecologic and historic areas," second, "to maintain and enhance the quality and character of natural streams and water supplies," third, "to provide adequate opportunities for outdoor recreation," fourth, "to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery," fifth, "to ensure that all new development is compatible with the purpose of this act as expressed in section 2," sixth, "to provide for adequate public access to the Niagara Escarpment," and finally, "to support municipalities within the Niagara Escarpment planning area in their exercise of the planning functions conferred upon them by the Planning Act."

In the NEPA 52 hearings in 1990 and 1991, the hearing officer was appointed by the province of Ontario, and he was required to hear and to report on the proposed amendment. One of the areas he covered in his hearing and in his report concerned a seven-factor test to assess the hydrogeological suitability of landfill sites. He outlined those seven factors in these words:

"(1) The hydrogeology of the area must be comprehensible to the board;

"(2) The loss of contaminants should be minimal (and

preferably zero) as a result of either natural containment or engineered works;

"(3) Natural containment and attenuation of contaminants is preferred to engineered containment and attenuation;

"(4) If it is predicted that contaminants may move away from the landfill site, then the postulated contaminants' migration pathway should be predictable;

"(5) It should be demonstrated that predicted leachate migration from the site will have no adverse impact on surface waters;

"(6) Monitoring to identify contaminant migration and escape pathways should be straightforward; and

"(7) There should be the highest possible confidence in the effectiveness of contingency measures to intercept and capture lost contaminants."

At the conclusion of his report, the hearing officer, in a section entitled "Overall Comments and Recommendation," made this statement:

"Evidence heard seriously questions the suitability of escarpment lands for the siting of landfills. The weight of this evidence was that, despite careful engineering in the preparation and management of sites, these escarpment lands are generally unsuited for the siting of landfills, due chiefly to the uncertainties for satisfactory containment of contaminants."

The hearing officer recommended that amendment 52 be accepted by the Niagara Escarpment Commission. It was, and it was also taken to the province, to the cabinet, where it was approved in 1992.

If I take you back to 1973, the province created the Niagara Escarpment Commission. It provided the commission with its purpose, "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment."

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In 1975, through the passage of the Environmental Assessment Act, the province established a process by which undertakings would be evaluated.

In 1992, the NEPA 52 amendment confirmed that landfilling in the Niagara Escarpment is incompatible with the purpose of the Niagara Escarpment Planning Act. What's happened since that time? In 1993, Ontario proclaimed the Environmental Bill of Rights, and as a preamble to that bill of rights, the province said this:

It said firstly, "The people of Ontario recognize the inherent value of a natural environment." Secondly, "The people of Ontario have a right to a healthful environment." Thirdly, "The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations." Finally, "While the government has the primary responsibility for achieving this goal, the people should have the means to ensure that it is achieved in an effective, timely, open and fair manner."

In conclusion, it is respectfully submitted that Bill 62 gives statutory expression to the policy which underlies

all environmental legislation and resulted in the approval of NEPA 52. The hearings officer, the Niagara Escarpment Commission and the cabinet have all agreed that waste disposal is a use which is incompatible with environmental policies relating to the Niagara Escarpment and should consequently be deleted as a permitted use.

We would respectfully submit that Bill 62 is the natural extension of NEPA 52 and the thrust of environmental legislation since the passage of the Niagara Escarpment Planning and Development Act. Bill 62 would prohibit the issuances of certificates of approval for waste disposal in the Niagara Escarpment plan area. In so doing, the Legislature of the province would be acting in a manner that is consistent with existing environmental protection policies and the preamble that's set out in the Environmental Bill of Rights; that is "The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations." It is respectfully submitted therefore in that regard that the Niagara Escarpment, recognized by the United Nations as a World Biosphere Reserve, deserves that protection.

Thank you for your attention. We would be pleased to attempt to answer questions that you might have.

Mr Offer: Thank you very much for that presentation, bringing us way back and right up to today's date.

Just for my information, and I think you've made your case with respect to the particular piece of legislation, but I would like to ask this question: In the regional municipality of Halton, in dealing with recycling facilities, the region is made up of a number of local municipalities. Are there any local municipalities which share particular recycling facilities?

Mr Taylor: I live in the region of Halton and I'm not aware, in my own municipality, of any shared recycling facility. Mr White might know.

Mr Robert White: No.

Mr Offer: No transfer stations or composting stations of that kind?

Mr Robert White: I can't think of a shared one.

Mr Offer: Because we have an amendment before us and I wanted to make certain that it wouldn't negatively impact on your particular area. Thank you again for the presentation. I think that it was very important, and it was very exhaustive in its scope and thoughtfulness.

Mr Murdoch: Just a statement, and Chris has a question. One thing: I challenge your comment when you said, "...the wisdom of the cabinet to form the Niagara Escarpment Commission." I challenge that wisdom, and I challenge you. There are not many of them left who did that, so thank God they're gone.

Secondly, you showed some good pictures of the Halton area. I can challenge any of those. We have probably just as nice or better ones up in Grey, and we've protected them ourselves, without the commission.

The other one: You were talking about rights. You just forgot to add that there are property rights too. That's all I wanted to say.

Mr Stockwell: Did the region of Halton take a

position on Bill 43, the landfill issue, with respect to provincial legislation?

Mr Taylor: We're not aware of any position that was taken by the region.

Mr Stockwell: You're not aware that they took a position, or you just don't know if they did?

Mr Taylor: I don't know. I'm not employed by the region of Halton; I'm an outside lawyer.

Mr Duignan: Thank you for an excellent presentation. What you've said is what the people of Halton region and right across a lot of the Niagara Escarpment have said for many years. I've presented to the House a petition of over 12,500 names and I've received some 2,300 letters in support of my bill, Bill 62. They want this simply to happen and they're saying that the Niagara Escarpment is no place to put a landfill site. I'm very appreciative of you coming along here this afternoon and presenting such an excellent case. You've presented it extraordinarily well, and thank you for doing that.

Mr Taylor: Thank you kindly for those comments.

Ms Harrington: You've given a very good presentation, and I want to thank the people of the Halton region for initiating the whole idea of the Niagara Escarpment many years ago. It seems, from what you've said, that's where the initiative did come from.

Have you been in contact with your colleagues at the region of Niagara, whether they are solicitors or planners, as to whether they back you exactly in what you are saying today? What would be their position?

Mr Taylor: As I indicated in one of the earlier questions, I am not an employee of the region of Halton and I have personally not been in contact with any person with the region of Niagara.

Mr Robert White: The city of St Catharines was present in the NEPA 52 hearings. They did make submissions and they did have some concerns with regard to the NEPA amendment. I'm not aware of the region of Niagara taking a specific position.

Ms Harrington: Okay. You are a planner with the region of Halton?

Mr Robert White: Yes, I am.

Ms Harrington: Have you been in contact with any of the planners at the region of Niagara about this issue?

Mr Robert White: No.

The Chair: Thank you both for your presentation.

WALTER ELLIOT

Mr Walter Elliot: I'm here as a citizen of the town of Milton to make a presentation about Bill 62. Before I begin the formal presentation as set out in my outline that has been circulated, I'd like to indicate that I've been a long-time advocate of the Niagara Escarpment and the preservation of it as a natural heritage.

I was born in a little town called Chesley in Bruce county. Most of my ancestors came from Grey county, so I share some of Mr Murdoch's thoughts with respect to the beauty of that area. I worked as a youth in Vineland, so I'm familiar in some way with that part of the Niagara Escarpment; attended university at McMaster; spent a great deal of time in the Wentworth area of the escarp-

ment; and my second degree I got at Brock, which took me a little bit further down the peninsula again. I also was a teacher and a principal of the Orangeville District Secondary School for a number of years, which bordered on the Hockley Valley, a very significant part of the Niagara Escarpment.

I feel very strongly about the principle of this bill that we're talking about today, particularly because my wife Anne and I—and Anne is in the back row listening to all of this—now live in the protected area of the escarpment in the town of Milton. We moved there by choice in 1986 because she paints watercolours and a mile or so from our backyard is Rattlesnake Point. So I feel very strongly about what I'm saying today.

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My presentation will have five parts. First of all, I support the bill. I want to ask a question: When is enough enough? I'd like to comment on long-range planning, make a few recommendations, and I'd like to make a plea, finally, that maybe in this instance we should rise above party politics.

Large holes in the Niagara Escarpment are not the place to dump garbage, because the fractured limestone cannot be engineered to ensure the safety of the water supply. Why put such a sensitive area of our environment to risk? If all the land in Ontario were ranked on a scale from one to 10, with 10 being lands which should not be used for waste disposal sites and waste management systems under any circumstance, the Niagara Escarpment plan area would rank 10-plus.

How many times does a specific site have to be determined as unfit for dumping garbage? The site in Halton Hills that Bill 62 is really aimed at is beginning its fourth go-round. First, the GUARD group successfully turned back the dumping of garbage in the area about 20 years ago. Secondly, the site was rejected in the initial stages of the environmental assessment that eventually located the present Halton landfill site, which is just down the road from our home. This is the first and only landfill to be established so far in the province by the process of the day. It took 17 years and millions of dollars.

Thirdly, the first RSI proposal was so seriously flawed that they are starting over again, I understand. Their first proposal has cost Halton region, the town of Halton Hills and citizens' groups more than \$800,000. A new proposal, the fourth, will almost surely cost more.

With billions anticipated in revenue, any corporation can bankrupt all opponents over time. In order to avoid this, at some point specific sites and land areas should be classified as unsuitable for landfill. It is only fair, if landfilling is prohibited in certain areas, to categorically state that fact so that corporations will not invest in prohibited areas.

The Niagara Escarpment plan already clearly establishes guidelines for waste management in the area. All eight regions and counties along the escarpment should be aggressively formulating their waste management plans well into the next century within the limitations of that plan.

The residents of these regions and counties must assume responsibility for reducing, reusing and recycling so that the waste stream can be reduced by 80% to 90% of the 1987 levels. As these goals are met and as new technology and alternative methods of waste disposal are developed, and they will be, massive landfilling may become a temporary problem. This planning is best performed at the local level. The provincial government should only coordinate the planning.

I recommend that Bill 62 be passed after it's been fine-tuned. Include a transition period to allow regions and counties to adjust their waste management plans. Where private waste management proposals are introduced, the entire cost of the proposal should be borne by the proponents, not the opponents. The onus must be placed on the opponents to prove that a site can be engineered to meet all environmental concerns.

Give the Niagara Escarpment plan some teeth. Bill 62 will make it much harder to amend that plan. It will protect a piece of our natural heritage by stopping future garbage dumps on the Niagara Escarpment.

In this instance I think it's one of those situations, as I said, where we should all rise above party politics. I'm a strong believer that in many legislative situations members of the Legislative Assembly should not be bound by party discipline. Ruth Grier's Environmental Bill of Rights was a reworked bill first proposed by Murray Gaunt, a Liberal member from Bruce. How could any Liberal or NDP vote against it? Bill 62 is another such bill. I recommend strongly that the bill be fine-tuned and passed.

A comment I wrote down as I listened carefully to the other presentations was, "If the members of the official opposition and the members of the third party who are on this committee don't find satisfaction with the amendment that was just circulated, their job is to make amendments to the amendment and make it right. That's what the people out there are expecting." Thank you very much.

Mr Murdoch: I have to thank you for bringing this to us. It's a very good report. I agree with you about the natural beauty we have up in Grey and Bruce, and you're pretty close to Grey when you're in Chesley.

The thing I have a problem with is that in Halton we have such a narrow area where the Niagara Escarpment plan takes over, but then when you get up into Grey and Bruce it does widen away out. If you look on the map—we should have maybe had one of the maps here—Dufferin has a certain amount, but when it gets up into Grey and then into Bruce it expands away out.

The problem I have with the bill is that it's taking in the whole planned area. Of course, you probably know that in Bruce and Grey we have some problems with the rural area of the plan being even in the plan, because in a lot of areas it's nowhere near the escarpment natural area. It looks like somebody, in their wisdom when they drew the plan, meandered through the country and took in the natural area and got most of the places they got—they even missed some of those—but then they came to the protected area and the rural area and they got lazy and they just started going concessions and the map gets square, as you can see. When it's squared and off and

away out, maybe two to three miles, from the natural area, it's still within this plan. If this bill's passed, it would cover that.

In Grey we're going through a plan for the waste of the Grey area. They're going to look for a site and one of those sites could easily be on the rural area. That's where I have a problem. You know what it's like up in our area. Do you agree with me there? Could there be amendments put forward or would you agree with amendments put forward if we maybe took the rural area out of some of the plan to allow this?

Mr Elliot: I feel very strongly, having looked at the escarpment for quite some time now, that there are three distinct areas to the escarpment, in my mind. My son and I have walked it, he all the way from Milton down to Niagara Falls on the Bruce Trail. I have accompanied him as many times as I could. Living in Grey and Bruce and the Hockley Valley, we have a fair idea of what's up in that part of the country. But I think from Hamilton-Wentworth on down to Niagara Falls, it is quite a different kind of an area because of the narrowness of the consideration. Winding through our area in Simcoe and Dufferin, it's a little bit different and, you're right, it does expand out into Grey and Bruce.

This is the kind of background thinking that I put in when I made the one statement that we've got to pay attention to what the counties in the region say about their particular area. The closer to the problem, I think the better the solution would be, because it's just like at these hearings: If you talk about the recycling in Halton region, Blair was here talking about the legal aspect and gave a great dissertation on the history of how we got to here, but in Halton region recycling is a regional matter. The collection is local municipality; it's disposed of at the regional level. So very definitely there's cooperation on the recycling front throughout the Halton region.

That was a plan that was developed by the Halton region and that's why it is pertinent and good for the Halton region. Bruce and Grey should be developing and having a great deal of say into what is developed in their region, in the same way. I think you've got an onerous task here, to amend that one clause that we've got here to make it satisfactory to all eight counties and regions. I don't really envy you your task in that, to make it perfect, because it's going to be hard to do.

But the comment I'd like to make in conclusion is that what evolved into the Niagara Escarpment plan, through the planning that was done there, has been well thought out, has taken 30 years to do, and any bill on the environment that's associated with the Niagara Escarpment planning area that doesn't take into consideration all the things that have already been established is seriously flawed. Really, a bill like this one should address where we're at with the Niagara Escarpment plan right now. It shouldn't go back to square one. In this case, I would feel a lot more comfortable if they just said, "No more landfill in the Niagara Escarpment plan area."

Mr Murdoch: That's basically what they're saying.

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Mr Elliot: Everybody would understand the thing.

But the way it's worded, it took me a long time to find out what was really meant by the waste management systems, that type of thing.

Mr Murdoch: I certainly appreciate your comments on local autonomy, and I know the Niagara Escarpment Commission's here, so hopefully they will listen to that. Thank you very much.

Mr Elliot: I wondered why Joan picked this spot to sit, because I thought a couple of times that a knife might have come out.

Mr Murdoch: You get your point across. I appreciate it and I know the people of Grey will.

The Chair: No knives allowed here.

Mr Duignan: Welcome, Walter. I guess you're used to this type of system as well. A very worthy opponent from the last election; nice to see you here, Walt, and a good presentation.

Again, the trouble is when you give a simple idea to a group of lawyers to work with, you get back a page of amendments. We will seriously take a look at the amendments you suggested here and see if there's some way we can work these amendments in and work with other amendments that other groups will bring forward over the course of the week. That's hopefully what clause-by-clause will do. But the main intent of the bill is to stop any new landfill sites on the Niagara Escarpment. That's the intent of the bill and that's not going to change.

Mr Offer: Good to see you again, Walt, and thank you for your presentation. I noticed what you said earlier on about Joan sitting behind you. Hansard should show that you sat in front of her and it wasn't you moving around. But I'd like to thank you for the presentation and for your coming before the committee and sharing some of your fairly broad experience in these areas.

I want to address, however, the issue that you have raised, and that's with respect to the amendment. I know that you've been here all day. The problem that we've had on the committee is that from the first presenter on, they've spoken about the support of the bill but the need for a fine-tuning, a refinement, an amendment, and we didn't have that amendment save as to a statement by the member that there was something coming.

Now we've received it. I don't know if you've had the opportunity of seeing it.

Mr Elliot: I glanced through it, yes.

Mr Offer: Can you draw any conclusion from this as to whether it maintains the purpose of the bill that you feel should be enshrined in legislation?

Mr Elliot: My impression was that the thrust of it is to address the concerns that have been made by several presenters this afternoon.

Mr Offer: Okay.

Mr Elliot: I'm not a lawyer.

Mr Offer: That's right. You always caught me like that, Walt.

When you talk about a transition period, I'm wondering if you could just expand on that for the regions and counties.

Mr Elliot: This bill could very easily be amended in a satisfactory way and third reading be given and then royal assent has to come along, but I really think that some input should be made by each of the regions and municipalities as to whether or not they can live with the bill as amended. How long that transition period would take, I have no idea. It just depends on how quickly they could react to it.

I go by my own environment, and that's Halton region. It's been said a couple of times that we've already sited a landfill. It took a long time to do it. We're in pretty good shape as far as landfilling is concerned, but even in Halton region my question when I talk to people about landfill again is, "What are you going to do after the present one fills up?" Because of the reduction, it's been extended from 20 to 35 years already. It may last a lot longer than that, but I haven't been convinced that there's not going to be any garbage that doesn't have to be piled or buried. Hopefully some technologies will come along that may reduce it even further, but the long-range plan should have some idea in mind of what's going to happen beyond the current facilities. Every region or county should be addressing that matter.

The unfairness of this kind of fight for a town like Halton Hills is that it's spent the \$800,000. I just learned today that this doesn't count the amount of money that the region has spent. It's a lesser amount, \$100,000 or so. It doesn't account for any of the money that the citizens' groups have spent in fighting the proposals over the years. As one of the groups that's here said to me, when you start talking \$100,000, that's a lot of cookies that you've got to sell, because that's how they raise the money.

Mr Offer: I'd like to thank you again for coming before the committee and outlining your position on the bill and some of the thoughts you have with respect to how it can be implemented. I appreciate it.

The Chair: Thank you, Mr Elliot, for your presentation.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
COALITION ON THE NIAGARA ESCARPMENT
FEDERATION OF ONTARIO NATURALISTS

The Chair: We invite the Federation of Ontario Naturalists, Ms Taylor, and the Coalition on the Niagara Escarpment and Canadian Environmental Law Association, Mr Lindgren.

Interjection: He's representing both of us.

The Chair: Welcome, Mr Lindgren.

Mr Richard Lindgren: Thank you, Mr Chairman. That's correct, I'm Richard Lindgren. My colleague, Ms Taylor, is planning to be here, but I propose to commence my presentation and she can join in when she gets here.

Just to be clear, I'm a staff lawyer with the Canadian Environmental Law Association, otherwise known as CELA. I'm also on the board of directors for the Coalition on the Niagara Escarpment, otherwise known as CONE, and I've been authorized by both of these organizations to come here today and speak in support of Bill 62.

In terms of the format, I'm going to take you briefly through our justification for Bill 62 and why we think it should be passed. As well, I've had an opportunity to look at the proposed amendment, and at the conclusion of my remarks I'll offer some of my observations on the amendment and why I have some grave concerns with the amendment.

CONE and CELA have been long-time supporters of the Niagara Escarpment. We participated in the original hearings on the Niagara Escarpment plan back in the early 1980s. Most recently, we've participated in the five-year review hearings on the Niagara Escarpment plan. We've also done our fair share of landfill hearings, including the Halton hearing that we've heard referred to already today.

It's in light of that experience that we believe waste disposal facilities are fundamentally incompatible with the protection and conservation of the Niagara Escarpment. That's why we fully support Bill 62 in its current fashion, in its current state, and urge all parties to work together to ensure the speedy passage and proclamation of Bill 62.

I have prepared a brief submission on Bill 62 and I've given it to the clerk, who I understand has distributed it to the members. It may come as a great relief to most people that I'm not going to take you line by line through this material. In fact, I want to hit the highlights, and the highlights only, and these are found at page 7 of the brief. That's where I reproduce our conclusions about Bill 62.

You'll see under the heading "Conclusions" we've listed three bullet-point reasons why we support Bill 62. I propose to go through each of those bullet points in a little bit of detail.

The first says that waste management facilities are incompatible with protecting and conserving the unique and internationally significant Niagara Escarpment environment. You've heard a number of submissions today outlining the value of the escarpment and its unique diversity. I think it's beyond dispute that it is a significant landscape that we're blessed with. It has provincial and national and international significance. The provincial significance was recognized, of course, by the passage of the Niagara Escarpment Planning and Development Act and by the passage of the Niagara Escarpment plan and by the creation of the Niagara Escarpment Commission itself. Clearly, the province itself has recognized that this is a treasure that we have in our backyards.

The international significance of the Niagara Escarpment, of course, was recognized when it was designated as a World Biosphere Reserve. It's interesting to note that there are only five other biosphere reserves in Canada. They're intended to form part of a global network of particularly significant ecosystems and natural areas. Again, UNESCO, through the designation, has recognized that the Niagara Escarpment is indeed a valuable treasure.

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That's why we support any and all attempts to protect the escarpment against the effects of incompatible land uses, and in our view waste disposal sites and waste management facilities are land uses which are fundamen-

tally incompatible with protecting and ensuring the long-term sustainability of the escarpment environment.

We all know some of the horror stories about landfills in the province of Ontario. There are lots of them. They leak; they contaminate groundwater; they contaminate surface water; they generate greenhouse gases; they produce nuisance impacts such as odour and noise and dust and traffic and so forth. These are all reasons why that particular land use should not be permitted to occur within the Niagara Escarpment environment. They have no place, in my view, on this internationally significant landscape.

That brings me to the second bullet point on page 7, that waste management facilities are incompatible with the purpose and objectives of the Niagara Escarpment Planning and Development Act. A few moments ago Mr Blair Taylor reviewed for you section 2 of this legislation. In effect, the purpose of the legislation is to protect and maintain the physical, natural and visual resources of the escarpment. As Mr Taylor went on to indicate, the legislation also provides that the Niagara Escarpment plan is supposed to do a number of things: It's supposed to protect unique ecological areas, it's supposed to protect and maintain water resources, it's supposed to maintain open landscape character and it's supposed to maintain natural scenery.

It can't be seriously argued that a waste disposal site, a landfill, somehow maintains or protects the visual or physical or ecological resources of the area. Landfills are simply inappropriate for the escarpment environment, and if we're serious about fulfilling the purpose and objective of the Niagara Escarpment Planning and Development Act, then Bill 62 must be passed immediately.

This brings me to my third and final bullet point, that waste management facilities are not permitted uses under the Niagara Escarpment plan but site-specific amendments may allow the establishment or expansion of such facilities within the plan area. The members of the committee will know that it was amendment 52 that deleted waste disposal facilities as a permitted use and we fully supported amendment 52 when it was circulated and being considered by the NEC.

However, we're still very much concerned that it's still open to waste management operators to come forward and apply for a site-specific amendment to permit either a new or an expanded waste disposal or waste management facility within the plan area. That, in my view, is a significant loophole and it's a loophole that must be plugged by Bill 62. In our view the most efficient way of plugging that loophole is by an express legislative amendment to the Environmental Protection Act which clearly says in unequivocal terms: Waste disposal sites and waste management facilities shall not be permitted henceforth on the escarpment or within the plan area.

Some people have suggested that Bill 62 unnecessarily constrains the site selection process under the Environmental Protection Act or the Environmental Assessment Act. We clearly and strongly disagree with that perspective. We think it's necessary and appropriate to declare up front that escarpment lands are simply off limits for landfilling purposes. The escarpment, as I've said, is a

special area. It deserves special recognition in law. It deserves the protection that Bill 62 attempts to give it.

Just backing up for a step, I think as a general proposition we can agree that there are some special areas in this province in which landfilling should not occur. I think we can agree, or at least there would be a consensus, that we shouldn't be putting landfills within provincially significant wetlands, old-growth ecosystems, or provincial parks for that matter.

It's for that kind of reasoning that we say landfill should also be excluded on the escarpment. For the policy reasons that I've outlined earlier, we need to protect this resource, and for the technical reasons you've heard as well. The escarpment is generally unsuitable, from a hydrogeological point of view, for these kinds of facilities. There is just too much concern and too much potential for adverse impacts arising from the fractured bedrock that we find throughout most of the plan area.

So that's why I say to you that Bill 62 does not eliminate a proponent's discretion within a site selection process under the EPA or the Environmental Assessment Act. Instead, Bill 62 structures the exercise of that discretion and focuses the proponent's energies and public energies and resources on more appropriate alternatives, more appropriate sites. That's why we urge the government, with the support of the opposition parties, to pass Bill 62 and proclaim it in force as quickly as possible. I think the bottom line here is that we've only got one Niagara Escarpment in Ontario, in the world. Let's not squander it by permitting these incompatible uses, such as landfilling.

I came here earlier today and listened with great attention to some of the submissions being made on Bill 62. I also had an opportunity to read the draft amendment that was circulated some 60 minutes ago.

Quite frankly, in my view this amendment is not necessary because I think it unnecessarily narrows the otherwise proper breadth and scope of Bill 62. When I read Bill 62 I saw the words "waste disposal site" and "waste management systems" included within the general prohibition and I thought that was done for a reason. I thought we were making a provincial statement that those kinds of facilities and those kinds of sites are not going to be tolerated in the escarpment. That's what we support and that's what we look forward to in terms of the ultimate outcome of this exercise.

But then I see this draft amendment. We see some attempts to whittle down the scope of Bill 62. Subsection 27(3) says the general prohibition doesn't apply to a transfer station. I'm concerned about that proposed exclusion. The transfer station can give rise to the same environmental impacts that I've just outlined: odour, noise, dust etc. It's also not clear to me whether this particular transfer station exclusion would be limited to municipal solid waste, or does it mean any facility that's a transfer station that handles hazardous waste or household hazardous waste? Would that be excluded as well? I'm not sure.

Then we see "recycling facility." There's an attempt there to permit recycling facilities notwithstanding Bill 62. I think recycling facilities are kind of like mother-

hood and apple pie. Everybody wants them. We certainly need them, but I still have to question the overall wisdom of saying we can put recycling facilities of any size or any magnitude within the plan area. As I mentioned earlier, I think we can all agree there are some special areas in the province of Ontario that should be off limits. I personally do not want to see recycling facilities, as desirable as they are, in an old-growth forest or provincially significant wetland or the plan area, for that matter.

So I don't like clause 27(3)(a). I think it's unnecessary and unduly constrains the scope of Bill 62. But that concern pales in comparison to clause (b), which purports to carve out a very large exception for waste disposal sites so as to enable such sites to be operated in an environmentally sound manner.

If the concern is that we need to have some mechanism to allow the Ministry of Environment to address problem sites, this is not the way to do it. The ministry, in my view, already has sufficient legislative tools under the Environmental Protection Act to deal with problem sites. The ministry, for example, can issue a director's order requiring the immediate cleanup or installation of a leachate collection system or purge wells or whatever might be necessary to bring a site into compliance with the law. We don't need to carve out this kind of exception. When I read this, as a lawyer I can say there are a lot of weasel words in here that lawyers would have a heyday playing with and I think it would be counterproductive to put in this kind of language.

In closing, before I turn it over to Ms Taylor, I would certainly urge this committee to exercise extreme caution when it's considering this kind of amendment. I like Bill 62 as drafted and I don't think this kind of amendment is necessary or appropriate for the escarpment.

The Chair: Welcome, Ms Taylor. There are about 10 minutes to the presentation, but if you want to make some comments please go ahead.

Ms Marion Taylor: My comments will be quite brief. I just wanted to basically support my colleague Rick Lindgren. We are both on the Coalition on the Niagara Escarpment and I would just like to say a word about my organization. The Federation of Ontario Naturalists has a long history in this province of protection for natural areas and wildlife and is also an agency that has given rise to a number of other worthwhile conservation efforts, among them the Coalition on the Niagara Escarpment. It was born at FON and we continue to support it wholeheartedly as we continue to support the Niagara Escarpment plan.

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I would like to say too about my own presence here that I'm a constituent, I guess, of Mr Murdoch's. Part of my time is spent in Grey county at Holland Centre so I'm just outside the planning area. I may say that the planning area as it exists is a minuscule portion of what was originally proposed and I would say that most of my area ought to be in that because we're sitting on the water supply for two river systems there. There are springs, there are headwater areas all along the back line on which I live, yet it is not within the plan.

I would simply like to say that I think the time has come in terms of planning that certain lines have to be drawn and, to risk perhaps an offensive illusion, that it's time no meant no in every respect. There are certain areas that by their very nature should not be developed, and I guess it boggles the imagination to think of why anyone would propose to continue to put waste sites on an area which is geologically an area through which water percolates. Certainly the area that I'm in, a large part of the water supply of southern Ontario probably originates there. There's a huge aquifer in the Dundalk area there which they know very little about and it extends for a great distance.

I think the bill is legitimate in opposing further waste sites within the escarpment planning area. I can't logically or rationally see any reason why anyone would propose anything different. It is simply not in anyone's best interests. I stress again, I come back to the idea that I'm looking at a beautiful area, but I'm also looking at water supply. It doesn't make any rational sense to permit continuation of dumps on the escarpment.

Ms Harrington: Thank you both very much for your presentations. Mr Lindgren, you had mentioned that you felt without Bill 62 there was a significant loophole, and I believe you led further to say that you feel there may be another loophole with this amendment. Is that how you're feeling?

Mr Lindgren: That's right. I think the amendment is a slippery slope.

Ms Harrington: I'd like to bring up the case of the city of Niagara Falls. You may be aware of that situation.

Mr Lindgren: I'm not as familiar with it as you, I'm sure. I've been watching it from a distance but I'm not personally involved in it.

Ms Harrington: They may be here speaking too tomorrow, if you're able to come, or anyone. I appreciate you listening. They may have concerns about this bill and I'll tell you why. First of all there may be remedial work needed to our landfill site, which is on the escarpment, and also we have started composting and recycling, which is also at that site. What would you suggest to the city of Niagara Falls or a similar situation?

Mr Lindgren: If they have an existing certificate of approval to carry out that activity they're not going to be caught by Bill 62 in any event. I think that's the short answer.

Mr Stockwell: For remedial work they would be.

Ms Harrington: Okay, so you're saying that Bill 62 without this amendment would be fine?

Mr Lindgren: No. I'm saying, if they already have the necessary approvals to carry out that work, the bill wouldn't catch them.

Ms Harrington: Oh, you're talking about the remedial work only or the closing of the site?

Mr Lindgren: I think we're operating on different wavelengths. What I think I'm hearing is, they have to undertake certain remedial actions on the site. All I'm saying, without being familiar with that situation, is that if they've got the approvals to do it, if the Ministry of

Environment and Energy's already said, "Go ahead," then the bill doesn't catch them.

Interjection: They haven't.

Mr Lindgren: I hear some comments over here that they haven't got those approvals. That may be the case. I don't know. I'm just saying if they're got it they won't be caught by the bill.

Ms Harrington: Okay.

Mr Duignan: Do you support amendment 52?

Mr Lindgren: Yes, we do, but it didn't go far enough.

Mr Duignan: Most of the proposed amendments that you see in front of you are included in amendment 52.

Mr Lindgren: That's right. We've supported Bill 62, but that doesn't necessarily mean we support all of the baggage that was attached to it. We certainly supported the purpose and intent of the bill, but I for one didn't like the way in which some of these other things were permitted by way of the back door.

Mr Duignan: Very, very briefly, the whole purpose of subsections 1(2), (3) and (4) is to allow some remedial work to take place at an existing landfill site if needed. It won't add any greater landfill area or landfill unless it's to do that work, to carry out the remedial work.

Mr Lindgren: I guess I would respectfully suggest to you that I make my living interpreting provisions like this and I can tell you this would be just a gold mine for lawyers on both sides of the fence. I'm telling you that it's not even necessary to do this kind of stuff. I'm here to say that the Ministry of Environment can issue a wide variety of administrative orders under the Environmental Protection Act that would require the necessary work without getting into cynical discussions as to whether or not the amendment permits larger or smaller quantities of waste, permits new types of waste, results in a greater service area. Who wants that kind of dispute? Just eliminate it in its entirety up front.

Mr Duignan: I appreciate your comments. Thank you.

Mr Offer: Thank you, Mr Lindgren, for your presentation. We started the day with the bill, we then moved into an amendment and we are now slowly getting into more of an understanding as to what the actual amendment means. Your comments, both on the bill and on the amendment, have been very helpful.

I don't see in this amendment where there is the remedial work permission that has been indicated by Mr Duignan. We're going to have to really take a look at the amendment over the evening to get a full understanding of it.

The bill carries an explanatory note. It says, "The bill amends the Environmental Protection Act to prohibit all further waste management systems and waste disposal sites in the Niagara Escarpment plan area set out in the Niagara Escarpment plan." With this amendment, will that purpose be met?

Mr Lindgren: I would say that if the amendment is passed as proposed, it would certainly impair the fulfilment of that objective. I would say that if you are out to

fully achieve that objective, pass the bill as is and as drafted.

Mr Offer: I appreciate your comments. We're going to have to take a look at what this amendment is and get a better understanding as to what its impact may be. Thank you.

Mr Murdoch: Welcome. Was your trip down from our area tough? Is it snowing up home or not?

Ms Taylor: I came down this morning. There's lots.

Mr Murdoch: Oh, you came down this morning. Okay. I came down last night. I thought maybe today was bad.

I've always thought the Niagara Escarpment plan and the commission and everything is like expropriation of people's property without compensation. That's the way I feel about it, and a lot of other people do. You may not. What I'm getting back to is people do own some of the land that these pits and quarries and things are on. Would you be in favour then that the government should buy these lands and maybe the conservation authority or people like that take them over?

Mr Lindgren: With respect, I disagree with the premise of your question, which is that people have these untrammelled rights to use and own and develop property, and if it's in any way constrained by government, they're entitled to compensation. That's a complete non-starter in law, to begin with.

Mr Murdoch: That may be so, but a lot of people don't agree with you. Anyway, go on.

Mr Lindgren: That's what the courts say, and the courts I think have the final say on these legal matters.

Mr Murdoch: We'll see.

Mr Lindgren: They've determined that. It's open to the province of Ontario or any planning authority to enact regulations or laws which constrain or restrict use of land.

Mr Murdoch: You didn't answer my question, though—I used that as an opener—and that's fine. As a lawyer, you want to go on with something else, but I asked you the question, would you be in favour of the province buying these lands and turning them over to conservation authorities or things like that?

Mr Lindgren: I'm not sure that the province of Ontario has the necessary economic resources to even attempt that, even if it were a good idea. So the answer is no.

Mr Murdoch: Okay, that's fair. That's what a lot of people have thought would be a good idea. I didn't know that CONE acted that way. You're speaking on behalf of CONE?

Mr Lindgren: When I'm speaking here today, I'm speaking on behalf of both CELA and CONE. CONE does not believe, nor does CELA, that we should necessarily compensate land owners because their right to use property has been constrained or restricted or regulated by law.

Mr Murdoch: But CONE in the past had advocated that a lot of this area be bought and put in park systems and things like that.

Mr Lindgren: There's no doubt that one way to protect natural areas is through property acquisition and management. That's always a good idea in principle, but given the current economic climate, I'm not sure that's a viable option these days. So we'll have to be looking at other ways to protect these areas.

Mr Stockwell: I'm sure there will be some argument with respect to depreciating value and so on. Certainly in a municipal world, downzoning someone's property, which in effect is expropriation without compensation, is certainly actionable and has been actionable in the past, and courts have found in favour of the people who have been downzoned.

Mr Lindgren: That's not right, but go ahead.

Mr Stockwell: It is right. I've been in situations where they have in fact found in favour, where we had to compensate.

As a comment to the statement made—it was made by the lawyer for CONE and CELA—that it's fundamentally incompatible to put landfill sites within the locations we're talking about, it was also determined that it was unacceptable to put landfill sites within these regions.

I would add that we never really do have problems determining where we're not going to put landfill sites. There usually isn't a big argument or demonstration. The problem we generally find is where we are going to put the landfill sites. The difficulty you're faced with, I might add further, is if this is fundamentally incompatible, I wonder if you can give me some fundamentally compatible areas where landfill sites should go.

Mr Lindgren: That's to be determined within the site selection process, but I'm here to tell you that the site selection process should operate within certain constraints and does operate within certain constraints. Certain lands are off limits, and I'm here to tell you, very respectfully, the escarpment lands should be off limits to landfilling.

Mr Stockwell: I understand, but the question is that it's fundamentally incompatible. There may be many people who agree with that. I'm sure a lot of them are in the room here today. But the question is, where is it fundamentally compatible to put landfill sites? That's always the problem we end up with, not where not to put them. Always the problem we have is where are we going to put them, and if we have fundamentally incompatible sites, we can only therefore assume there must be fundamentally compatible sites. I'd just like to know where they are so we could just go ahead with it and we wouldn't have to have these meetings.

Mr Lindgren: The fact is landfill sites do get selected and approved within the province of Ontario.

Mr Stockwell: So you say where they're sited today are fundamentally compatible sites?

Mr Lindgren: No. I'm just saying to you it's not impossible to locate and site a landfill in Ontario.

Mr Stockwell: It's not impossible to find a fundamentally compatible site that everyone can agree on is a good place for a landfill site?

Mr Lindgren: There are some what they call willing host communities that exist.

Mr Stockwell: Can you name one?

Mr Lindgren: I prefer not to name them on the record, but there have been situations where landfill sites have either been expanded or proposed with the support of the local municipalities.

Mr Stockwell: So if the local municipality would want a landfill site as part of even this region, it's unacceptable?

Mr Lindgren: It's unacceptable for the larger policy and technical reasons that I outlined earlier.

Mr Stockwell: I understand. Thank you.

The Chair: Mr Chiarelli, one last comment.

Mr Chiarelli: Does a waste management system or a waste disposal site include a single-service lot, septic-tank type of situation? Are we saying here that if there is a farm or a lot or a piece of property on which you could now build a single residence with a septic tank, you won't be able to do that?

Mr Lindgren: I couldn't answer that off the top of my head, because the phrase—

Mr Chiarelli: Is it not a significant point?

Mr Lindgren: Just let me finish. The phrases "waste disposal site" and "waste management facility" are defined with a great deal of precision under the regulations. You'll see that there are a lot of things that are included as waste management facilities and waste disposal sites, but a lot of them are then exempted from the operation of the act. It's a very circuitous route, if you will, as to what's caught and what's not by the definition. So I couldn't offer you an opinion.

Mr Chiarelli: Are you suggesting that you can't tell us right now that it does or doesn't include single-lot servicing?

Mr Lindgren: I can't tell you off the top of my head.

The Chair: Ms Taylor and Mr Lindgren, thank you very much for your presentation today.

This committee will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1632.

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- Murdoch, Bill (Grey-Owen Sound PC) for Mr Tilson
- Offer, Steven (Mississauga North/-Nord L) for Mr Curling
- Perruzza, Anthony (Downsview ND) for Mr Mills
- Stockwell, Chris (Etobicoke West/-Ouest PC) for Mr Harnick

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Standing committee on
administration of justice

Comité permanent de
l'administration de la justice

Environmental Protection Amendment Act
(Niagara Escarpment), 1993

Loi de 1993 modifiant la Loi
sur la protection de l'environnement
(Escarpement du Niagara)

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 15 February 1994

The committee met at 1009 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

ENVIRONMENTAL PROTECTION AMENDMENT ACT
(NIAGARA ESCARPMENT), 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LA PROTECTION DE L'ENVIRONNEMENT
(ESCARPEMENT DU NIAGARA)

Consideration of Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment \ Projet de loi 62, Loi modifiant la Loi sur la protection de l'environnement à l'égard de l'escarpement du Niagara.

JOAN CORNFIELD

The Chair (Mr Rosario Marchese): Ms Joan Cornfield, welcome. You have half an hour for your presentation.

Ms Joan Cornfield: I'm going to make a slight change. I will hand out my handout to the members of the committee after I make my presentation.

Mr Chairman, members of the standing committee on administration of justice and ladies and gentlemen, I am one of the few people in these hearings who does not represent a large organization or who is not designated as part of a group. Therefore, I had to ask myself, who am I representing? I decided that I was speaking for those of your constituents who are environmentally concerned. I also decided that my job was to present the big picture. I come to fulfil those two commitments and to speak as a supporter of Bill 62.

November 1991 to June 1992 was a period of intense activity for me. I attended a big international conference of women in November 1991; 1,500 women from 83 countries getting ready for the Earth Summit. In March I spent four weeks at the United Nations working with the women's caucus at the last preparatory committee before the Earth Summit. Then in June of that year I went to the Earth Summit itself.

Out of those experiences I wrote 57 letters to George Bush, then President of the United States. I sent George the first 34 letters but I don't think he received them, because he didn't reply. By then it didn't matter, though, because I realized that George was really a symbol of all people in high office, in the military, in political positions, in industry, in business, those who now hold the reins of power. Because you people are representing Ontario residents, I know I'm addressing some Georges now, both in the standing committee and among the presenters too.

I would like to begin by reading one paragraph from my first letter, dated December 20, 1991:

"George, suppose they're right? The environmentalists. Suppose these prophets of doom who say we have only 10 years to save the planet are right? Ten years. Or less. And right now you are sitting there as head of the most powerful nation on earth, embedded in worldwide social,

economic and political systems that are destroying it. Our only home. Throughout all the millennia humans have inhabited the face of this planet, you are now at the nexus, the turning point, that very short time we have to begin to undo the harm we have inflicted on our living earth, our fellow beings, our brothers and sisters. Maybe you didn't bargain for this dubious privilege, but nevertheless it is yours."

My first question to the Georges who may be in this room, including those who are going to speak against Bill 62, is, suppose those environmentalists are right.

Here are some statistics from the Canadian organization Global Awareness in Action:

Each minute, at least 51 acres of tropical rain forests are destroyed; we consume almost 35,000 barrels of oil; 50 tonnes of fertile soil are washed or blown off crop land; and we add 12,000 tonnes of carbon dioxide to the atmosphere.

Each hour, 1,692 acres of productive dry land become desert; 1,800 children die of malnutrition and hunger, which makes a total of 15 million children each year; \$120 million go on military expenditures, making a total of \$1 trillion each year; 55 people are poisoned by the pesticides they use and five die; 60 new cases of cancer are diagnosed in the United States alone. As an aside, 50 years ago, one in 20 women in North America developed breast cancer. Now it's one in eight.

Each day, over 230,000 babies are born; 25,000 die of water shortage or contamination; 10 tonnes of nuclear waste are generated by the existing nuclear plants; 250,000 tonnes of sulphuric acid fall as acid rain in the northern hemisphere; 60 tonnes of plastic packaging and 372 tonnes of fishing net are dumped into the sea by commercial fishermen; almost five species of life become extinct. The present rate of extinction is at least 1,000 times the pace that has prevailed since prehistory.

This is to give you some idea of the devastation that has taken place on this planet in the last 24 hours.

Now I'd like to read from a column in the Star, January 29, 1994, by David Suzuki. He is quoting Alan Thein Durning's comments from Worldwatch. This is going to give you a time-line sequence on one of our problems:

"Imagine a time-lapse film of the Earth taken from space. Play back the last 10,000 years, sped up so that a millennium passes every minute. For more than seven of the 10 minutes, the screen displays what looks like a still photograph: the blue planet Earth, its lands swathed in a mantle of trees. Forests cover 34% of the land. Aside from the occasional flash of a wildfire, none of the natural changes in the forest coat are perceptible....

"After seven and a half minutes, the lands around Athens and the tiny islands of the Aegean Sea lose their forests. This is the flowering of classical Greece. Little else changes. At nine minutes—1,000 years ago—the

mantle grows threadbare in scattered parts of Europe, Central America, China and India. Then 12 seconds from the end, two centuries ago, the thinning spreads, leaving parts of Europe and China bare. Six seconds from the end, one century ago, eastern North America is deforested. This is the Industrial Revolution. Little else appears to have changed. Forests cover 32% of the land.

"In the last three seconds—after 1950—the change accelerates explosively. Vast tracks of forest vanish from Japan, the Philippines...most of Central America and the horn of Africa, from western North America and eastern South America, from the Indian subcontinent and sub-Saharan Africa. Fires rage in the Amazon basin where they never did before, set by ranchers and peasants. Central Europe's forests die, poisoned by the air and rain. Southeast Asia resembles a dog with mange. Malaysian Borneo appears shaved. In the final fractions of a second, the clearing spreads to Siberia and the Canadian north. Forests disappear so suddenly from so many places that it looks like a plague of locusts has descended on the planet.

"The film freezes on the last frame. Trees cover 26% of the land. Three fourths of the original forest area still bears some tree cover. But just 12% of the earth's surface—one third of the initial total—consists of intact forest ecosystems. The rest holds biologically impoverished strands of commercial timber and fragmented regrowth. This is the present: a globe profoundly altered by the workings—or failings—of the human economy."

"Seen this way, the planet's forests are being irrevocably lost in the geological blink of an eye. Plotted over a mere 10 millennia, the curve of forest devastation leaps almost straight off the page in our lifetime. And if we add to that graph the generation of pollution, the loss of topsoil, human numbers, production of greenhouse gases, and so on, the curves all climb vertically in the very last moments. Individual disasters like Chernobyl, large clear-cuts, Bhopal, megadams or oil spills are merely part of a terrifying spasm of annihilation."

1020

For the last four years, I have been immersing myself in all the complexities of our ecological crisis at a doctoral level. These studies have led me to the inevitable conclusion that those environmentalists are right, that humanity indeed stands at the point of no return. Either we human beings change our ways or we exterminate ourselves, and the point of no return is close. We may even have passed it. You and I, those of us who are adults in this group, will very likely live out our natural lives. But our children? Our grandchildren? Unless we act now, I believe we are condemning them to unimaginable suffering, a suffering compounded by the certain knowledge that not one human being on the face of this planet will survive, not one, and for our children, no hope.

But what happens to us when we begin to consider that these environmentalists are right? What happens to us psychologically? Elizabeth Kuebler Ross gives us the clue in her work with terminally ill patients. We enter the grieving process. There are five stages to this process: denial, rage, bargaining, depression and, finally, acceptance. I wrote to George about this process too. Here is

another paragraph from that particular letter:

"Now we're all entering the grieving process, at least all of us who have heard and addressed the fact that those environmentalists may be right. And because the catastrophe of a planet in a terminal illness is so huge, so beyond us all, our grief is proportionally less able to cope with the enormity of what we've facing and our leaders and business people, because they have comfortable lives, are most likely to be in denial. It's easy to be in denial if you have a swimming pool in the backyard and a two-car garage and well-watered shrubs and trees surrounding your property. It's easy to be in denial if all your associates are in denial too. I suspect you are in denial, George."

Denial is the first stage. In denial, you go on as if nothing bad has happened, business as usual. This first stage is still the operative one for most of the people I know: "Global warming? With this winter? Give us a break." The statistics aren't out yet for this year, but two summers ago we had a wet, cold summer. We in Canada got firsthand evidence that global warming was an illusion. But worldwide, the temperature did edge up just a bit. It edged up. We still have lots to eat here, so we really can't believe that the thinning ozone layer will result in damaged crops. Other parts of the world are not so lucky. Famine is already widespread in Africa. In Chile sheep are becoming blind because of overexposure to ultraviolet rays.

We really don't want to consider that the growing joblessness, the growing violence, the growing disregard for the rule of law, the growing erosion of our national sovereignty by the globalization of business just might be connected to the deterioration of the earth's health, do we? Denial.

In New York, I interviewed a Canadian delegate. I asked this person if the rest of the Canadian delegation was at all perturbed about the environmental crisis. "They're scared to death," was the reply, "and they don't know what to do."

I would suggest to you that these delegates were not in denial. They had negotiated the first step in the grieving process and had acknowledged the problem. So they found themselves face to face with fear, a very unpleasant state to be in, but the first step to begin to address the crisis.

What has all this got to do with Bill 62? Bill 62 seeks to ban landfill sites on the Niagara Escarpment. Halton, incorporating 23% of escarpment lands, has most of the quarries that big business interests know would bring them lots of money if they could be filled with garbage. So what if it's a UNESCO biosphere reserve? Money makes the world go round, doesn't it?

Southern Ontario residents, businesses and industries are producing garbage at a great rate. The garbage has to go somewhere, doesn't it? And of course we have foolproof technology to ensure safety; and do these groups want to criticize the NDP. Garbage has been a big headache for the NDP. "Why did they have to pick 56 sites at first," they ask, "and then narrow them down to three? Why did the NDP have to get a great number of us all upset when they were going to narrow them down

to three anyway? And of course it was a stupid idea to stop Kirkland Lake from dumping that garbage in their mine shaft. Wasn't it? And now, if Bill 62 passes, we won't even be able to put the garbage in our own backyard. This is getting quite ridiculous, isn't it?" So say those who want to landfill on the escarpment.

The arguments of such people arise out of denial. The NDP has done us all a great favour by getting us upset about landfill sites, about telling us we have to deal with our own garbage, about refusing to trek it up to Kirkland Lake, and Bill 62 reinforces that point because, if it passes, we won't be able to put that garbage on the escarpment either. Sooner or later, more and more of us are going to get through our denial on this issue and address the real problem, the production of garbage itself.

Garbage is the result of the consumer society. The industrial northern countries, comprising about 20% of the world's population, now consume 80% of the world's goods. They destroy the earth's resources and suck wealth out of the developing nations, further impoverishing already poor people. Then they spew that wealth out in waste products.

In New York, at PrepCom IV, the poor southern nations begged the northern countries to reduce their consumption, begged us to reduce the pollutants that threaten us all, begged us to provide the money and technological resources to help them develop sustainably. I heard some of their pleas. We, the rich, the ones who did the polluting in the first place, turned our backs on them.

Underneath all this human posturing and jockeying for money and power and prestige, all this talk about how we are land owners, all this talk about how our technological improvements will solve our problems—underneath all that lies the Earth. The Earth doesn't care about our human concerns, it doesn't care at all, and if we destroy its capacity to sustain us, we will go like the dinosaurs. To realize that one fact is to begin to get out of denial.

David Suzuki's 12-year-old daughter spoke to all 105 heads of state at the Earth Summit. She reduced many of them to tears. We human beings are easily moved to emotion. But emotion isn't going to save us. Action is. Even though the present mechanisms of government are not really adequate to the environmental tasks we face, they are all we have right now and we must use them.

Therefore, when you consider Bill 62, you are making a decision of tremendous importance, because to aid Bill 62 on its way into the statute books of Ontario law is to partake in a process that will lead us to a sustainable future. It may seem like a little baby step in the face of the huge problems I've touched on in this presentation, but it's the one right in front of you now. All over the world, other policymakers are beginning to take little baby steps out of their own environmentally unfriendly situations too. So you're not alone. When enough of those steps join together, we'll be able to show our children that we do care about their future, that we want them to have a life. Thank you for your attention.

1030

The Chair: Thank you. We'll begin with the third party today. Mr Murdoch, two minutes.

Mr Bill Murdoch (Grey-Owen Sound): No questions.

Mr Noel Duignan (Halton North): Indeed it's a great pleasure to see you here this morning, Joan. I think your caring and compassion for the environment and for humanity is well shown here this morning, the same as it was right around the province and indeed around the world. Again, I appreciate your comments. Your point is, what if the environmentalists are right?

Ms Cornfield: That's right.

Mr Duignan: What if RSI happens to get an amendment? It will have to go to the amendment process, and it's because of amendment 52. What if they get the decision to go ahead with the landfill site? Will the directors of RSI be living on the escarpment? Will they be living downstream from the escarpment?

It's strange, but in the latest corporate search of RSI, and we're waiting to see if there's any connection back in some of the directorships as well, there's only one individual of the directorships of RSI living on the escarpment, in Campbellville; the rest of them are living in Toronto, Victoria, British Columbia, New York state or Connecticut.

These people have no interest in the community of Halton Hills or any community along the escarpment. That's the problem, because if these people had to live where they were going to put the garbage, they would be singing a different tune than what they're singing later on this morning.

Ms Cornfield: What I have come to believe is that every single person on this planet is in this together. Maybe rich people and maybe people who live away from the escarpment or away from wherever the polluting is taking place all over the world are going to be lucky and their descendants will live—I don't know how long. But we are all on the way out. You cannot stop pollution at the borders.

Denial is a very common thing; it's a natural phenomenon. I'm in denial most of the time, because if I were not, it would take all the heart. I'm here today because I believe there's still time. But there's not time if we remain in denial. If we think of this as a community thing, we have to build communities, but we are a global community now. We have to deal with these problems globally, and that's one of the scary things, that the international networks are not there yet. They have to get there.

People, and I don't care where they're coming from, business, politics, the military—the military is causing 30% of the pollution in the world today—have to realize that they cannot afford to let something like the Niagara Escarpment erode. They cannot afford to keep producing garbage. It's too late for that now. We have to go through that grieving process and we have to get to the point where we realize that life is different now; it can never be the same. We have to go on.

Mr Duignan: It's quite obvious that there are a number of people still in denial and who figure that money can buy them a piece of heaven somewhere. But in fact that's not the case at all.

Ms Cornfield: It isn't.

Mr Duignan: We'll be facing notices like that, where the town of Cayuga, for example, February 11, now will have to have the drinking water trucked in. That's the type of situation that RSI wants the people of Halton to face in the coming years.

Mr Steven Offer (Mississauga North): Thank you, Ms Cornfield, for your presentation. I must say—it had nothing to do at all with your presentation—I was listening with some degree of surprise to Mr Duignan's question, because I think that he was saying that those who don't live on or near the Niagara Escarpment are somehow incapable of dealing with this issue.

I happen to live in the region of Peel, not on the escarpment, but I certainly would think that I and my colleagues of all three parties would have the capacity to understand and deal with this particular issue. I was a little surprised with that type of exclusionary comment made by the member.

My question to you though, as someone who without any doubt is significantly concerned with the past and very much concerned with the future—and I think a lot of people share those concerns. The bill is a blanket prohibition against sites and systems on the Niagara Escarpment. I take it that you are in full agreement with this legislation.

We have an amendment that Mr Duignan is ostensibly going to be moving before this committee, and that amendment will permit transfer stations, recycling facilities, composting sites. It will permit using, operating, altering waste disposal sites on the Niagara Escarpment. My question to you is, in light of your very powerful presentation and in light of the amendment which Mr Duignan has indicated he will be moving, do you support the amendment that Mr Duignan is going to be moving?

Ms Cornfield: I am not basically a political person. I was very impressed with the environmental lawyer who spoke yesterday. I thought he made good sense. I was a high school English department head; I'm retired now. But I really come from a point of common sense. We are in a mess and we've got to get from where we are now to sustainability.

My common sense tells me that if there's somebody who has a building permit and wants to build a house on the escarpment, and he's got the okay, got the go-ahead, sure, he can put in a septic tank. If there's a landfill already on the escarpment that is beginning to leak, of course you fix it up. That's common sense.

Mr Offer: I'm sorry, but this doesn't answer my question. I appreciate the attempt. This does not speak about remediation work. This does not speak about a septic tank. This talks about new facilities: transfer stations, recycling facilities, composting sites.

My question to you—and it is not a political question—is that the fact of the matter is that in two or three days we are going to be discussing this particular bill in the clause-by-clause analysis. You come with a great deal of experience. You care very much about the land, the water, the air. My question is, do you support the amendment? I and everyone on this committee have to know, if

possible, the answer to that question.

Ms Cornfield: Then I would say, if what you say is correct, that it is not involving present facilities, I am against the amendment.

The Chair: Thank you very much, Ms Cornfield. We enjoyed your presentation. It was very informative.

RECLAMATION SYSTEMS INC

The Chair: I call Reclamation Systems Inc, Mr Walter Graziani, president, and Mr Donald Mills, solicitor. You've seen the process. Try to leave some time for questions at the end, if you can.

Mr Donald Mills: Good morning. My name is Donald Mills. I'm a lawyer, one of those fellows. Sitting beside me is Mr Walter Graziani, who's the president of Reclamation Systems Inc, known in this room and elsewhere very fondly as RSI. We'll use those initials because it's a lot faster to say RSI.

First, I want to thank you on behalf of RSI for giving us the opportunity to come and dialogue with you this morning. We appreciate the opportunity and we hope in fact it will involve a dialogue. Second, I want to say that I believe we're the only delegation that has complied with the request of the committee to put our views in writing and provide 25 copies to the committee by last Friday. We did that.

I've been around these halls long enough to know that you're very busy people and the chances of most of you having read that brief by now are perhaps not great. But I do urge on you to please take the time, before you come to clause-by-clause consideration of the bill, to read the 13 pages that we put together for you. I think they highlight the points we would like you to take into consideration as you review the bill. It would certainly be an insult to your intelligence for me simply to take the time this morning to read through it line by line with you. I don't intend to do that.

1040

As I sat reflecting last night on what I could do in the limited time that we have to best put RSI's position into perspective, it occurred to me that you might appreciate a presentation which cut through the legalese that we lawyers are so infamous for and tried to deal with the situation in layman's language, trying to explain to you what we feel this bill is trying to do.

If I could characterize it this way—I do believe that Mr Duignan would not disagree with it as an accurate characterization, but of course, he will tell me if I'm wrong after I've done it—I would suggest that this bill has three real sections in it which have the following effect.

The first section says that notwithstanding seven and a half years of due process by RSI, through the legislated environmental and planning processes of this province, and the expenditure already of some \$6.5 million in going through that process, this Legislature, in its wisdom, ought to arbitrarily stop the judicial process, terminate the application, put a halt to it and say it's over and done with, it's killed, to use Mr Duignan's words.

In my review, it's somewhat ironic that we're appearing before the administration of justice committee

because surely that would be a denial of natural justice in its baldest terms. Nevertheless, I'll come back to the individual sections, but that would be my characterization of the first section of the bill.

The second section says that if you own property anywhere within the Niagara Escarpment plan and you have any thoughts or you might ever have any thoughts about allowing your land to be used for a landfill or for waste management facilities, don't even think of it, don't dream about it. It's out of bounds no matter where your land is, no matter what the merits of it may be. Again, I'll come back to that one in a moment in discussing the three sections.

The third section would say something like, "Notwithstanding that the province has established waste management systems which are designed and are effective, not only in preserving the environment but in enhancing it, for the purposes of the Niagara Escarpment or those lands within the Niagara Escarpment plan, such waste management systems shall not be permitted to exist and the functions which they carry out for the people of the region must be carried out off the escarpment." I'm not here to fight the battle of section 3, because time doesn't permit that and it's not really relevant to section 1, which I am here to dialogue with you on.

I do point out to you, and I think many of the delegations have pointed out, and Mr Duignan's amendment attempts to address, the problems. I simply say this about section 3: If you're going to say in a bill, "You can't have waste management systems on the escarpment," but in a separate section say, "Notwithstanding that, you can have them," why mention waste management systems at all? Why not just delete reference to waste management systems from the bill? However, that's really just a gratuitous comment for you because I would like to you direct your thoughts, in relation to the RSI application, to section 1 of the bill.

In discussing section 1 with you, I will be asking you take into account that many of the points I make relate equally well to section 2, the one that says people who have land but are not now in the process of developing landfill can't do it in the future. Yesterday I think it was Mr Stockwell who characterized this bill in relation to those land owners as downzoning and I think he correctly did that.

Downzoning is a concept that is not well liked by anyone who owns land, and there are certain legal implications attached to a governmental body taking action which has that effect. I'll be happy to comment on the legal consequences. They are certainly not, in my interpretation of the law, consistent with the gentleman from the Canadian Environmental Law Association who spoke about it yesterday. I've had some considerable experience in the field, I suggest a lot more than he has, just by virtue of the fact that I've been practising in the field for 35 years.

Nevertheless, I want to come back to section 1, the section which Mr Duignan very clearly and very honestly—we give Mr Duignan 150% for candour and straightforwardness. Our brief suggests in the opening pages that by giving copies of some press releases he has been open

and straightforward about it from the start. Bill 62 is designed and is aimed to kill the RSI landfill. If the RSI landfill application were not at the stage it is currently at in the judicial process, Bill 62 would not be required.

It is true that it has a motherhood content to it that says that this is good for the whole of the escarpment, we must stop it in the whole of the escarpment, but I think Mr Duignan would be fair in saying—and his remarks a few minutes ago which treated RSI, I think, with some disdain show that he has no confidence in and no respect for RSI and what it is trying to do and that his bill is designed to stop the process in its tracks.

What is the function of a legislative body in dealing with judicial process? Perhaps it's rhetorical to be asking that to the administration of justice committee, but it seems to me that this committee would want to uphold the tenets of natural justice in this province above all else.

If Mr Duignan's bill was consistent with government policy and was, as he says and as the gentleman from the environmental law association said, designed to close a loophole, then that might make some sense. But I suggest to you all with the greatest respect that there's no loophole being closed by this bill. The loophole doesn't exist. The process is there. It allows this procedure to be carried on, and because it does, Mr Duignan wants to stop it in this circuitous and simplistic way and, in my respectful submission, in this improper way.

Let me tell you for a few moments what the policies of this province have been for a number of years in relation to the RSI application. I'll interweave into this recitation the facts that relate to the Niagara Escarpment Commission, which played a very big part in the development of that policy.

We begin with the Niagara Escarpment Planning and Development Act itself, which is a creation of this province. It's a policy statement, it's a very worthwhile document and its goals and objectives have already been espoused to you by other delegates. There's no suggestion by our side that this isn't an admirable policy for the province to have. RSI has no intention of flouting or in any way taking away from the goals and objectives of the Niagara Escarpment Commission. I shouldn't say the "commission," but the "plan," because the commission and the plan don't necessarily coincide on their goals and objectives.

In 1989, you heard the chairman of the commission say yesterday, NEPA 52 was enacted. This is an amendment to the Niagara Escarpment plan, which was designed at the time, quite honestly and openly, to prevent landfills from occurring on the escarpment. There was a protracted series of public hearings and eventually a report given to the cabinet and the cabinet deliberated on it and eventually came down with a decision.

It's appendix E to our brief and I would ask you to please read it when you have the moment, but I do want to just read the first page of a press release issued by the government at the time when the Honourable Ruth Grier was the minister. Contrary to the wishes of the Niagara Escarpment Commission that landfills be precluded, this is what the government said in relation to NEPA 52:

"Ontario has tighter controls on waste disposal in the Niagara Escarpment area as a result of a provincial cabinet decision yesterday to amend the Niagara Escarpment plan.

"References to landfills and related operations formerly permitted under a definition for 'utility' are deleted from the plan."

1050

I'm going to emphasize the following words:

"Cabinet's decision effectively requires landfill proposals to undergo a rigorous plan amendment process for new or expanded waste disposal operations or if there is a change in the type of material being disposed of.

"Landfill sites approved prior to cabinet's decision are not affected, nor are proposals for new or expanded waste sites that are already being processed. As well, small-scale recycling, composting and waste transfer facilities serving local communities continue to be permitted."

So it is clear that while NEPA 52 was hoped by the commission to prevent landfills, the cabinet decided the opposite. It simply said, "We're tightening up the proposals, there must be a plan amendment before it can be done and of course you must go through all the processes."

Then the next thing was, coincidental with that, the environmental assessment procedures of RSI were proceeding, and during those, of course, there was very strong opposition voiced and everyone tried to get the bill killed.

There is a section in the Environmental Assessment Act called section 11, which most of you may or may not have heard of or at least understand and which gives the minister the power to kill, effectively, a proposal that is the subject of environmental assessment if she feels it's appropriate to do that. In spite of all the lobbying that went on at the time, the minister, to her credit, determined in November 1991 that this would not be the case with the RSI application and that it should go forward and the environmental assessment should be subjected to a government review.

It was during the next six months. During that time the opponents still fought very hard, through a letter-writing and lobbying campaign with the minister and the government, to bring section 11 into play and to kill the proposal. To the government's credit, that was not done, and in March the government notified the joint board that the matter was to proceed.

I'll skip over the procedures that have happened since then, because I'm happy to answer them in questions, and simply come to the next step which was taken to try kill this proposal by the Niagara Escarpment Commission and the others opposed to it. That was to ask the minister to declare the proposal, that is, the proposal to amend the Niagara Escarpment plan which is an integral part of the procedure, frivolous and vexatious. There is a section of the Niagara Escarpment Planning and Development Act that permits that, and the commission in its wisdom decided this was the way to go. Again to the credit of the minister and this government, that proposal was rebuffed and it was not considered to be frivolous and vexatious.

We come down to the point today where we're about to be able to have the matter finally tried on its merits by a new joint board—and again, if you want explanation of why there was an old joint board and a new joint board, I'll be happy to give that. The fact is, however, that there is a joint board duly constituted under the Consolidated Hearings Act waiting to hear this matter.

The reason it isn't hearing it right now is that the original joint board had determined that some of the applications that RSI had made were not in satisfactory form to be considered by the board. Since that time we've been putting those applications into form and we expect to be ready for a preliminary hearing before a joint board later this spring. That is why the panic is here from Mr Duignan and his supporters, that all of a sudden we're about to get heard on the merits and that can't be allowed to happen.

There are three matters I want particularly to draw your attention to in these remarks that relate to that property that is shown up on the board there, on the easel.

We've heard much, you've heard much and we agree with all of the laudable comments about the pristine conditions of the Niagara Escarpment and the need to preserve them. All of us, however, have our warts, and the Acton quarry is clearly a wart on the Niagara Escarpment.

That picture was taken in 1987. Since then, the rest of the property has been excavated and you have 160 acres of hole in the ground with jagged rock walls 100 feet high, and it is not a pretty sight. It has to be dealt with and our proposal proposes to restore it to its natural condition over a period of time. Obviously, it takes time.

The opponents should understand that this is not an anomaly of history. This quarry is being enlarged by the procedures of the province of Ontario today and will continue to be, and the land to the south of it will be opened up and enlarged. So it has to be dealt with. We're not dealing with a loophole; we're dealing with a real fact, a scar that must be dealt with. We believe that when we're given the chance to have a hearing and to put all of the matters before the board, the board will then decide whether or not this is an appropriate condition.

The biggest concern expressed in all of the hype that has been put before you and put in the press and put to the minister and everyone else is that this is a water problem, that this is situated on fractured dolomite or limestone, and everybody knows that limestone carries water and this is going to pollute the water systems.

If you'll take the trouble to read our submission, you will see that there are quotes taken directly from the government review of the environmental assessment, and they say not equivocally, they say unequivocally the ministry is satisfied that the concerns about groundwater interference are not well founded, that there is not a problem, the government policy is met and this matter should be heard by a board.

So all of the speakers who have come to you and said with the best of intentions and undoubtedly in good faith, "Everybody knows that this is a disaster waiting to

happen," are simply not being fair to the facts. An environmentalists' hearing that we're about to have before a joint board is going to encompass about nine months of time. I couldn't possibly explain to you in five or 10 minutes all the things that will be said there that will either make the project fly or, if it doesn't deserve to fly, make it sink.

The second thing, and I've already alluded to it, is the fact that this is supposed to be closing a loophole. I would hope that you, as members of the justice committee, would all recognize there's no loophole in the present legislation. This legislation, this bill, if it's permitted to go ahead, will be stopping the judicial process by a piece of legislation and, in my view, that would be unprecedented in this province.

The third objection that is made to it by Mr Duignan and his supporters is that it would create a dangerous precedent. Well, I don't know whether any of you know it, but this is the only pending landfill application now in process on the escarpment. To allow it to proceed to its natural conclusion, whatever that might be, is hardly creating a precedent.

Therefore, for you at the very least to provide an amendment to your bill, if you decide the bill has merit to go ahead, that would grandfather this one application is the way that the Legislature has traditionally treated matters of this nature by allowing those in the mill, as the courts call it, to continue in the mill and let the judicial process determine where they are. To do otherwise would be to expropriate their rights, if you want to use a trite phrase, without any remedy being available to them. Let me come back to that one point and then I'll stop because I see that I've used 20 minutes.

The downzoning of property occurs, if it's done by legislation, where a piece of legislation like the parkway belt legislation, with which you will all be at least somewhat familiar, takes away the rights of owners of land to certain uses that they might previously have had. The courts have said that in appropriate circumstances that can happen without compensation.

Those are rights, and if you look at all the cases, in spite of what my learned colleague said, those are cases where there were no plans under way, no procedures. People just held land that they thought they were going to be able to do something with in the future and the province in its wisdom said no. That would be the situation applying to other land owners on the escarpment who may want to use their lands for landfills but haven't started any procedure because they don't have anybody interested in doing it at this time.

That's not the situation, with the greatest of respect, with the RSI application. This has been in the mill seven and a half years at an expenditure of \$6.5 million, and a lot more still to be spent. We're not asking you to be sympathetic to us for having spent that money. It's a risk that business takes, but it's a risk that we were entitled to take. We followed all the right procedures, we're about to be heard by a court and we certainly hope you will not deprive us of that right at this stage.

Finally, one point that Mr Duignan made in his criticism of RSI in his questioning of Ms Cornfield: The

RSI does not have at the present time any American directors or owners. The information he has is old. We had an American owner that is out of it and they're now Ontario owners. There's one director resident outside of Ontario and he happens to choose to live in British Columbia.

I'd be happy to answer any other questions you have, but there's one other point I must mention. In the proposed amendment there's an exoneration clause—it's the last clause at the bottom of the page—which I find to be totally offensive and unprecedented. It purports to exonerate everybody, including the members of the Legislature and the crown, from any liability for offending the rights of private citizens of this province.

I've been practising for 35 years and I can tell you without hesitation that there has never been, to my knowledge, a piece of legislation like that and I would suggest to you that it is totally inappropriate. We would now welcome the opportunity to answer any questions or dialogue with you.

1100

Ms Christel Haeck (St Catharines-Brock): I find your presentation interesting and thought-provoking. Having a leaking landfill site in my own riding, and that is in the escarpment, I guess I have some more sympathies with Mr Duignan than I do with your application.

I am somewhat concerned with, as you say, downzoning. You have been working with this now, as you say, for seven and a half years, and yet shall we say with changes in governments, changes in philosophy, I would think that in light of what was happening with clause 52 there was some hint given to you that probably the concerns of this government, in particular over the last three and a half years, probably deviated somewhat from the policies of previous governments and that the kind of application that you were putting forward might not find the same favour as it might have when our landfill in St Catharines got built, which was in 1976.

Mr Donald Mills: Would you like me to comment?

Ms Haeck: Sure.

Mr Donald Mills: I think you raise a very good point. You have an older landfill that was created at a time when the restrictions that now prevail and the technology that now is available were not available, and therefore you apparently have a problem in St Catharines. It can be dealt with and I'm sure it will be dealt with because people like you will make sure that happens.

In the present environment, however, what this government in particular can be praised for doing is, it has tightened up, as the press release said, the requirements, and now the strictures that apply to the establishment of the landfill are so tight that unless you can establish to the satisfaction not just of the ministry but the joint board after the ministry that all of these things are met and the environment is not going to be harmed, you just don't get approval. So it's a terribly great risk that a proponent takes in going through the process.

All I'm saying is that we respect the new criteria that apply. When our proposal gets heard by the joint board, all the opponents will get the chance to see that state-of-

the-art technology is being applied here which will enhance the environment, not detract from the environment, and I say that in all sincerity. But I can't give it to you here because we don't have time. We will get our chance to show that in the hearing, and if we can't show it we'll be out of luck.

Mr Duignan: On a point of order, Mr Chair: The witness raised the issue that I hadn't given correct information with regard to the directors of RSI. My information is as of February 4 and based on a filing they made October 22, 1993. I suggest that if there has been a change in directorship, they certainly haven't complied with the Corporations Information Act and filed those changes.

Mr Robert Chiarelli (Ottawa West): I may very well vote in favour of Bill 62 and whatever amendments come forward, but I am concerned about the process, about fairness and about equity. Indeed, we in the committee are dealing with your particular application as it affects your rights right now, and apparently nobody else has—at the present time we have a private member's bill coming forward. This is a very significant issue, covering a lot of communities in the province. My question is, first, why is it a private member's bill and not a government bill?

Second, the clerk and the researcher have indicated to me that they do not have on record at the present time any indication as to whether or not the Ministry of Environment and Energy supports or opposes this bill, and that concerns me. If there is something in writing concerning the ministry's position, it should be part of the record. We are sitting here virtually as a court and we don't have a complete record and that bothers me immensely.

I want to ask Mr Mills whether he has anything in his possession, or whether his client has anything in his possession, which indicates whether or not the ministry supports Bill 62 or opposes Bill 62, whether or not you know anything about that part of the issue, because as you said, there is a process for filing briefs, submissions etc. We're sitting here as a court, we're entitled to have all the evidence and all the information.

It's highly unusual for this significant legislation to be a private member's bill and not a government bill. I want to know where the government sits, I want to know whether there's anything on record and I want to know, if there is nothing on record, can we get something on record by noon tomorrow? But I'd like to know your interpretation of the equity of not having that information on the record.

Mr Donald Mills: First, in direct answer to that question, Mr Chiarelli, we agree that it's totally unfair for Mr Duignan to make the statement that the ministry supports this, when our information is the very opposite. We don't have anything in writing and I suspect Mr Duignan doesn't have anything in writing. The minister has certainly been represented by his staff at these hearings, but the staff aren't empowered, I'm sure, to speak to the committee, and I think it's most unfair that you would be asked to make a determination without knowing where the ministry stands.

We should have been told, I believe, as we were verbally, where the ministry stands. The best I can give you, sir, is that it's our understanding that the ministry does not support the bill.

Now, I can go a step further than that and say that in the materials we have filed—and if you'll take the trouble to read our submission, you'll see—we make reference to decisions made by the ministry, statements made by the ministry which are totally inconsistent with support of this bill.

Mr Chris Stockwell (Etobicoke West): I agree with Mr Chiarelli with respect to the concerns he has outlined, not the least of which, of course, is the ministry position.

The member who sponsored this bill has told us at this committee at least once, and in the past, that there's ministry support, and from what I've read of the affidavits put before us, it just seems in the past two years that, categorically, the Ministry of Environment and Energy has gone out of its way to say, "We're going to allow this process to carry on."

I guess I'm very frustrated having all these constituents down here from the member's riding whom he has whipped up, I can understand why, there's very real concern in the riding. But as far as I can tell, there's no ministry support. There's an amendment—I don't know if we have it yet; I came in late—the amendment that Mr Duignan offered up yesterday, the proposed amendment, that the proponents of the landfill haven't seen, nor have the residents seen. We're sitting here today with contrary positions outlined by the ministry officials. You know, this is getting to be really a bad scene.

Mr Anthony Perruzza (Downsview): Mr Chairman, does he have a question?

Mr Stockwell: Well, I may well have a question. If you want to hear my question, I'll try and sum up, sir. I'm sorry if I've taken too much time.

The Chair: That's the point here. We have limited—

Mr Chiarelli: Is this a kangaroo court?

The Chair: Go ahead, Mr Stockwell. We're limited in time, but please continue.

Mr Perruzza: Do your job—

The Chair: Mr Perruzza, it's not helpful. Mr Stockwell, we're limited in time. Please direct yourself as best you can.

Mr Stockwell: I understand that, and I apologize for taking the time, Mr Chair, but it is very frustrating sitting here trying to get a position from a government that won't give us a position on a private member's bill that apparently, from the documents, it doesn't support, bringing in all kinds of people from this riding, boosting up their hopes, when I'm not sure that the government even supports this member's bill.

All I can ask the deputant is, from your discussions, meetings, reports, has anyone told you at any time that the government is supporting this private member's bill, or is it just in the private member's head that he thinks the government is supporting this bill?

Mr Donald Mills: All of the discussions we've had, at all of the levels we have had them, have indicated to

us this is not government business; this is not a bill which the government is prepared to support. We were naturally concerned when the matter got past second reading stage to committee; it's very unusual for a private member's bill to do that. It has been appropriate for it to happen because it has given everybody a chance to air their views, but in the final analysis, it shouldn't be the automatic pre-emptor to a third reading.

So the answer to your question is, we have every indication that this is not government business and will not be supported as government business, but it's all verbal.

The Chair: Thank you, Mr Mills and Mr Graziani, for coming today.

1110

Mr Offer: Point of order. Point of privilege.

The Chair: I'll take the point of order.

Mr Offer: There have been some discussions which have just been carried on that deal with whether the ministry does or does not, whether the minister does or does not support this bill. The reason it is a point of privilege is that the first question that I asked in this hearing was to the sponsoring member. That was the question, does the ministry support this particular piece of legislation? The member responded in the affirmative, and we have to know what the situation is now—

Mr Perruzza: I'd like to speak to that.

The Chair: No, I'm sorry. I won't take the debate on this. This is not a point of privilege. I understand the questions that members are raising. At the appropriate moment, Mr Duignan, you can—

Interjection.

The Chair: It is not a point of privilege.

Mr Stockwell: Did he mislead the committee?

Mr Offer: He made a statement on Hansard.

The Chair: That is not a point of privilege.

Mr Stockwell: It is a point of privilege. Did the member mislead the committee when he told us there was government support?

The Chair: Mr Stockwell, that is not a point of privilege, nor a point of order.

Mr Stockwell: I was misled as a member—

The Chair: Mr Stockwell, we understand the comment you've made and that Mr Offer has made. I'm going to move on to the next deputant. Mr Duignan will have an opportunity to make his comments as we go along, because I don't want to delay the deputants. We will have the time to discuss the other matter.

Mr Duignan: I simply want an opportunity to challenge the allegations made by some members here.

The Chair: You will. I will do that.

Interjections.

The Chair: Mr Duignan, hold on, please. Mr Stockwell, it's not helpful.

Mr Stockwell: It would be a lot easier if you'd just show us the letter. Then we could move on.

Mr Perruzza: All you're doing is raising questions,

innuendos, clouds.

The Chair: Hold on. No, I'm not taking any discussion on this.

Interjection.

Mr Stockwell: I would ask the member to withdraw.

The Chair: He doesn't have to withdraw in committee. Members can say all sorts of idiotic things at times.

ECOLOGICAL AWARENESS GROUP,
LANDSCAPE AND ENVIRONMENT

The Chair: Next we have Ecology Awareness Group, Landscape and Environment, EAGLE, Mr Giuseppe Gori. Mr Gori, we're running out of time. You've seen the process. Please begin any time you're ready.

Mr Giuseppe Gori: I will be very brief. Thank you very much for this opportunity to speak in front of you. I would like first of all to congratulate Mr Duignan for proposing this bill.

My name is Giuseppe Gori. I represent a group of citizens called EAGLE, Ecology Awareness Group, Landscape and Environment. EAGLE is a group of residents in the Halton section of the Niagara Escarpment area. We are very concerned about preserving the natural environment in that area, specifically regarding the surface waters, the environmentally sensitive areas—there is ESA 28 and ESA 29—and the underground water as well. We are also concerned with those activities which by their very nature would disrupt and destroy the natural environment and irreparably change the natural landscape of the escarpment.

The Niagara Escarpment, because of its rock formations, its underground waters, its surface waters and important environmentally sensitive areas, has been recognized as a unique area in Ontario, and indeed in Canada, by the United Nations.

I am sure that you know and that you have enough information about the rock formations and about the environmentally sensitive areas. I don't have the time to go into technical details here. I'm sure everybody here is aware of the importance of this information, so I'll skip the technical details.

I would like to give you a little bit of historical perspective and ask you to consider the intent of this bill with respect to what the intent was in the past with respect to legislation that has been proposed in the past.

The Niagara Escarpment, this strip of land, is actually quite narrow. In some areas it's only about one mile wide. Several efforts have been done in the past to protect this strip of land from large developments which would disrupt it and which usually have no specific need to be located in this particular strip of land.

Since 1968 the Ontario government has recognized the uniqueness of the escarpment face and its scenic value and tried to preserve the Niagara Escarpment and the natural aspects of this area. There was a study commissioned, probably around 1967, which was completed in June 1968. It was the Niagara Escarpment Study: Conservation and Recreation Report. This study recommended that "special consideration should be given to ensuring the preservation of the escarpment features."

In 1970 the Niagara Escarpment Protection Act was passed, which specifically defined this strip of land as a "protected zone." More recently, in 1980, the Niagara Escarpment Planning and Development Act was unanimously passed. The purpose of this act was "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure that only such development occurs as is compatible with that natural environment." That's section 2.

This act also confirmed the mandates of the Niagara Escarpment Commission, including the purpose of completing the Niagara Escarpment plan with specific objectives, including the following: "to maintain and enhance the quality and character of natural streams and water supplies" and "to ensure that all new development is compatible with the purpose of this act as expressed in section 2," the section we just quoted above.

The Niagara Escarpment Commission, in accordance with that mandate, has since amended the Niagara Escarpment plan to specifically state that no waste disposal should occur on the escarpment.

Now, you probably have heard enough from other presentations about possible damage of waste disposals in this kind of rock formation and, again, I don't want to go into those technical details. You probably have enough information from other presentations.

Bill 62, in accordance with the purpose of the above acts and in accordance with the direction and recommendations of the Niagara Escarpment Commission, entrenches years of efforts into law by amending the Environmental Protection Act.

As a business person, I am particularly concerned about undue government regulation and interference with free enterprise. However, government must interfere where private interests would go against the interests of the public at large for the only reason of maximizing their own profit.

In other words, what I'm saying is that government should do what the people themselves cannot do or what private corporations cannot do or will not do. However, it must take action when the above conditions do not apply. In this case, the private interests of waste disposal are in direct conflict with the interests of the people. The government must take action.

Through this bill, by setting a rule prohibiting waste disposal across all of the escarpment, no particular private interests would be specifically targeted, and future generations would profit by inheriting from this generation an area where people and the environment did gracefully coexist.

It is with great relief that we welcome Bill 62. We would like to encourage the members of all parties to support this bill and to do one action today that will protect this area from exploitation for generations to come.

Mr Offer: Thank you for your presentation. I don't have very many questions, save as to this: You come before the committee in full support of Bill 62, and I'm wondering if you could share with the committee whether

you've seen the amendment as suggested by the member.

Mr Gori: Yes, I've seen the amendment. I did not have the time to study it in detail. However, what I realize is that the amendment makes a little more strict the regulation. The intent, to me, is not changed. The intent of the bill is not changed by this amendment. Again, from what I understand, and it's a superficial review, I do not see anything in the amendment that goes against the intent of the bill.

1120

Mr Offer: For myself, it's hard for me to reconcile some of the issues here. I'm hopeful that you and others will be able to help me through on this, because you've spoken quite directly about Bill 62 and the need to prohibit all sites and systems on the escarpment. I understand why you're saying that, but then the amendment does allow the type of things that you in your main presentation speak against.

It seems to me, as we work through the bill and move into the clause-by-clause, I will want to know your position as to whether it is, in your opinion, permissible on the Niagara Escarpment to have new transfer stations, new recycling facilities and new composting sites; whether it will be permissible on the escarpment, in your opinion, to deal with, in altered form, the use/operation of an existing waste disposal site.

Mr Gori: It's difficult to deal with existing situations. Existing situations have acquired certain rights and you cannot close them down immediately from one day to the next. As far as new disposal sites, we would be completely against it, and as far as recycling and transfer stations, I don't think there is any particular reason why they would have to be located specifically in that strip. However, I do not know whether legally it is possible to prevent this kind of situation, especially when it is a temporary situation.

Our preference I guess would be no all the way, but in certain cases, the Niagara Escarpment plan allows, for example, for quarrying, for other particular developments, for private houses to be built, for certain ponds to be allowed, for farm purposes and so on and so forth. I'm not here with the experience or the expertise to debate any single particular development in the escarpment, but the intent of this bill is to prohibit those large developments which would change the natural nature of the escarpment, which would interfere with the environmentally sensitive areas, which would change the landscape for ever.

Mr Offer: My final question: Outside the issue of landfill sites, you are content with the protections afforded to development in, on and around the Niagara Escarpment as given by the Niagara Escarpment Commission and the Environmental Assessment Act or the Environmental Protection Act, but you are not content with that process and protections by those bodies in so far as landfill sites are concerned.

Mr Gori: I'm not content with the situation where the Niagara Escarpment Commission does not have the power to enforce its own regulations. The Niagara Escarpment plan is not entrenched into law. That's why

I think this bill is necessary, because without Bill 62 the Niagara Escarpment Commission cannot enforce its Niagara Escarpment plan.

Mr Murdoch: Just to carry on with that, that's not right. The Niagara Escarpment plan is law. So you certainly aren't right there, and I guess maybe you don't understand the act. The Niagara Escarpment plan is an act; it's a law. It's not a policy statement of the province; it's an act. So they do have the right to enforce their law.

Mr Gori: I'm not a lawyer, but the way I understand it is that there is an act called the Niagara Escarpment act which then provides for the creation and the maintenance of a commission which has as its mandate what is called the Niagara Escarpment plan.

Mr Murdoch: That's right.

Mr Gori: Now, whether the Niagara Escarpment plan itself is law, I don't know.

Mr Murdoch: It is. So they don't need another act.

I was going to reflect on what Steven said, which is that you're not content with the way the system is set up now to get a landfill site. You mentioned that you weren't content with that. Is that right?

Mr Gori: I'm not sure I understand your reference to landfill site.

Mr Murdoch: There is a process set up in the province now that people have to go through if they want to obtain a landfill site. I understand RSI has done that, but you're not happy with it.

Mr Gori: I understand. My presentation stresses the fact that this area is a unique area and it's a special area and it should specially be protected. So the normal process of applying for a landfill should continue and is valid across Ontario, but certainly wouldn't be valid right here in this block or in downtown Toronto or in special areas where these things should not be done.

Mr Murdoch: In the area you're talking about, there is only, as you mentioned, in some places a mile at the most. Do you realize, once it leaves that area and gets up past Dufferin county, into Grey and Bruce counties, there are three and four miles and it's not all rock face, but if a bill like this goes through, it affects the whole area?

Mr Gori: Yes, but the reason why in certain areas it's larger is specifically because those features of the escarpment have been recognized for a large area. So I'm very much prepared to support this for all of that planning and plan area that has been identified to have those specific features.

Mr Murdoch: Obviously, you haven't travelled the whole escarpment then, because you're totally incorrect when you say that. In our area, as I said, it goes in some places for three or four miles and the rock face or the natural area is two or three miles away. So it does not cover it all. The plan has never been designed right. This bill covers the whole plan, so that's improper.

Mr Gori: What you're saying is that the plan area has not been correctly identified.

Mr Murdoch: Certainly it hasn't.

Mr Gori: In that case, the best thing to do is to issue an amendment to the Niagara Escarpment plan to remove

those areas from the plan.

Mr Murdoch: You could do that or you could take bills like this and not adopt them, because they are doing something that isn't proper to begin with.

Mr Gori: No. I don't think that's the correct situation. This bill is correct. If you are stating that the area in some cases does not have the features that make it part of the plan, then the correct action is to revise that plan and amend it.

Mr Murdoch: You're going backwards.

Mr Stockwell: I listened with great interest that you don't believe in government overinvolving itself in private citizens' and business capacity. You believe that government should be there to facilitate, and as a free-enterprise person, a private business person, you can see the problems with government when it gets too involved.

If you've read the draft, what do you think, as the free-enterprise-thinking, private business person that you are, about subsection 1(2), which says no matter how badly we treat somebody, no matter how much we cost them, no matter how wrong we are, the caveat, the end phrase is, "You can't sue us"? As a private free-enterprise business person, what do you think of that clause?

Mr Gori: I would say yes, I agree with you. It's not a particularly reassuring statement.

Mr Murdoch: It makes you think something's wrong, doesn't it?

Mr Gori: If that's the answer you wanted, as a private citizen.

Mr Stockwell: I just want the answer that you want to give, that's all.

Ms Haeck: If I can pursue that for a minute, the fact is that you on the one hand have some concern about the clause that Mr Stockwell raised, but by the same token you indicated that you fully support the concept of "for the betterment of all" legislation coming forward relating to the health and wellbeing of not only yourself but the people who live within the escarpment lands, because of the possible environmental hazards associated with a landfill site. I did hear you correctly in that, did I not?

Mr Gori: You put a lot of words in my mouth.

Mr Stockwell: Get used to it.

Ms Haeck: Did I get the concept at least right?

Mr Gori: The intent I guess is correct, yes.

Ms Haeck: The intent of Mr Duignan's bill, one which I support in relation to the health and wellbeing of a lot of citizens in my area, because I don't live adjacent to an existing landfill site that is polluting the lives and properties of people who live adjacent to that landfill site. Seeing the potential for those hazards, you would agree with the overall intent of Mr Duignan's bill?

Mr Gori: That's correct.

1130

Mr Duignan: Just very briefly, whereabouts is your house in relation to the quarry?

Mr Gori: It's within the corner of influence.

Mr Duignan: I think you're actually the last house prior to the quarry site.

Mr Gori: It's the second-last house.

Mr Murdoch: Now we know why he's upset.

Mr Duignan: So would I be.

Mr Perruzza: Now you know why he's upset, that makes it all right?

Mr Duignan: I know your passion for saving the escarpment, because you're in the process of moving a number of amendments to the Niagara Escarpment plan act. Could you tell me about your latest proposal that you're trying to get approved?

Mr Gori: Yes. Thank you, Mr Duignan, for giving me the opportunity. I would love to discuss in more detail some of the issues related to quarrying, for example, but I have initiated two amendments to the escarpment. Both of them are still going through the process. I believe the first one is four years old. The second one, the last one that you mentioned, tries to include in the Niagara Escarpment plan area, I don't remember the exact figure but approximately 2,000 acres that are now not within that area, for the same purpose, for protection.

Specifically, in that area there are several wetlands identified by the region of Halton. Part of ESA 28 is also contained in that area. More specifically, there is a 100-acre untouched piece of land that is just south of the quarry. I believe it's the property of the quarry, United Aggregates. That part is also proposed to be included as natural area in the Niagara Escarpment plan area.

The Chair: We're out of time, Mr Duignan. Mr Gori, thank you for coming today.

Mr Stockwell: Did you get the letter?

The Chair: Mr Gori, right now Mr Stockwell is asking another question. Mr Duignan, do you want to respond to those questions that were raised at this time, before the next deputant?

Mr Duignan: First of all, as you know, I don't need to respond to allegations made by RSI or indeed by the member. However, I do have the support of my colleagues; otherwise this particular Bill 62 would not be going to public hearings at this particular point in time.

Mr Offer: On a point of order, Mr Chair: On the response made by Mr Duignan, when this committee opened at 1:30 yesterday afternoon, the first deputation was by the member. You will then recall there was an opportunity for questions by opposition parties.

As the Environment critic for my party, the first question I asked Mr Duignan was whether the ministry and the Minister of Environment and Energy support this piece of legislation. Hansard will show Mr Duignan responded in the affirmative. He said yes. That is somewhat different than what he has said now.

Mr Duignan: That's not a point of order, Mr Chair. Maybe you'll give me an opportunity to finish what I have to say.

The Chair: Mr Offer, it is not a point of order. I'm allowing you to make your statement, but it will not go on. I will not allow this dialogue to go on and on. It is not a point of order, but you have made your point.

Mr Offer: Then let me ask the question of the

member once more, whether he wishes to respond or not.

The Chair: That's fine. I will allow a few minutes.

Mr Offer: Does the minister and the Ministry of the Environment support this piece of legislation?

Mr Duignan: It's nice to know that actually one can finish making one's statement before being interrupted. The member who asked the question, Mr Offer, perhaps misunderstood my response to the question about MOEE support for my bill. What I meant in answering yes was that MOEE has been supportive in assisting me to improve my bill. For example, they helped me draft—

Mr Stockwell: Oh, please. Give me a break, Noel. Get a grip.

Mr Duignan: On a point of order here, Mr Chair.

The Chair: Mr Stockwell, would you allow him to finish his statement.

Mr Stockwell: Move on. Do they support your bill?

The Chair: Mr Stockwell, I would like the member to complete the statement, and then we can move on to the next deputant.

Mr Perruzza: A point of order.

The Chair: Not necessary, Mr Perruzza, really.

Mr Perruzza: I do have a point of order.

The Chair: Points of order are usually on process.

Mr Perruzza: It is process, though.

The Chair: Procedural process.

Mr Perruzza: Procedural, yes.

Mr Duignan: Again, as I said, they helped me write my amendment and they have basically approved my particular amendment. I did not say at any time that I have a written letter of support from the ministry but rather that MOEE has been supportive of my efforts to make this a good piece of legislation. I also would be extremely surprised if Mr Mills's statement was accurate when he stated that MOEE staff have apparently stated unequivocally that they do not support the bill. That is not the case at all.

Mr Stockwell: Do they support it?

Mr Duignan: I would just like to correct the record on those two issues.

Mr Perruzza: A point of order.

The Chair: Mr Perruzza on a point of order.

Mr Perruzza: I'm not understanding this. I'll tell you why I'm not understanding it. It's to do with the procedure, quite frankly. We're here, right? This bill got referred here by the Legislature, by the House. We're here to do a job, and that is to review this, listen to people, review the legislation, go through the legislation clause by clause.

Then it will be reported back to the House, and then at that point there will be another vote. That's the way laws have always been made in this province and quite frankly in this country, right? We're not deviating from that at all. In fact that process is moving right along.

The Chair: Thank you. It's not a point of order.

Mr Perruzza: What's their point?

The Chair: It's not a point of order, but I think you

made the point.

Mr Stockwell: I want my point of privilege now. I asked, I've been patient, I want my point of privilege.

The Chair: A point of privilege.

Mr Stockwell: In no uncertain terms, the member I believe has misled this committee. The question was put directly and I asked for a ruling. The question was put directly: Does the Ministry of Environment support this piece of legislation? The member answered, not, "Yes, they supported me in holding the pen while I wrote it," not "Yes, they supported me when I got a legal opinion," he said, "Yes, they support this piece of legislation."

Now it's come to our attention in the second day of public hearings on this piece of legislation that in fact maybe they don't support this piece of legislation. He has no supporting information to suggest they support it other than, "They helped me write it."

Mr Perruzza: So what are you suggesting?

The Chair: Mr Perruzza, please.

Mr Stockwell: I ask you, Mr Chair. I believe the member has knowingly misled this committee into believing the ministry supports his piece of legislation when there is nothing on the record that says so.

The Chair: Thank you for the point.

Mr Gary Malkowski (York East): A point of privilege.

The Chair: Hold on, please. We cannot censure individuals for things they say in committee as we can in the Legislature.

Mr Murdoch: Really?

The Chair: We can't. Members can say some extraordinarily crazy things. The member raises a point of privilege. It is not a point of privilege. You made a statement as to your point of view about what he said. He's now replied on that point about what he was talking about with respect to the ministry's view or support or otherwise.

Mr Stockwell: Okay.

The Chair: So we don't have a point of privilege. The points have been made on the other side. Mr Duignan has made his points; you've made yours. Unless there is any additional information to be added—

Mr Duignan: On the same point, Mr Chair: I take great offence at what the member has said. I believe he has used unparliamentary language and I ask him to withdraw that.

Mr Stockwell: Which one?

Mr Duignan: "Misled."

The Chair: Mr Duignan, you have made your point quite clearly. He's made his point. We can't force members to withdraw statements they have made in committee. All I'm trying to point out is that you've made your statements on the record and he has made his. I want to move on to the next deputation.

Mr Malkowski: Mr Chair, just a point of privilege, if I may: I'm finding this conversation and this process a little offensive to the speakers who've come here today to present. Let the speakers finish with their presentations

and let's get on. We can debate this ourselves at some other point.

Mr Offer: Prior to the deputants coming, I'm going to be making a motion to hopefully clarify this matter. Would you like it to be heard now?

The Chair: I would rather not. I'd rather hear this next presentation.

1140

TOWN OF MILTON

The Chair: Welcome to this committee. You have seen that we're an active committee, active legislative members, and you know the process. Please begin any time you're ready.

Mr Gordon Krantz: I'm Gord Krantz, mayor of the town of Milton. On my right-hand side is Mel Iovio, planning director, and on my left is David Hipgrave, CAO for the town of Milton. We do have a document that's hopefully been passed around, and for the most part we will be reading from that document. It is our intention to respond to anything technical by Mr Iovio, anything financial by Mr Hipgrave and anything in general by myself. Thank you again for hearing from us.

The town of Milton is before you this morning to lend its full support to Bill 62 for three major reasons:

(1) Milton relies on a groundwater source for its public water supply. Therefore, protection of this valuable resource from contamination by landfill sites is paramount.

(2) Milton recognizes the Niagara Escarpment as a unique physical feature worthy of its designation as a biosphere reserve. Landfills are an incompatible use of this area.

(3) The cost to defend these principles through a Niagara Escarpment plan amendment process is getting beyond our financial capabilities to bear.

On June 5, 1989, council supported Niagara Escarpment plan amendment 52, and on May 19, 1993, in response to a proposal by MPP Noel Duignan to table private member's Bill 62, council passed the following resolution. It was resolution 777-93 and it was moved by Councillor J. Challinor and seconded by Councillor A. Melanson:

"Whereas the town of Milton recognizes that good water supplies must be protected for the present and future citizens of this community; and

"Whereas the town of Milton appreciates the natural beauty and special place of the Niagara Escarpment;

"Now therefore it is moved that this municipality recommends that the Legislature of Ontario give unanimous support to the private member's bill which proposes to forbid the placing of any future landfills (garbage dumps) on the Niagara Escarpment."

That was carried.

At this time I'd like to turn it over to Mel Iovio to elaborate on any of the environmental and land use concerns. Again, as I mentioned earlier on, Mr Hipgrave will touch on some of the financial points a little later.

Mr Emelio Iovio: Good morning, ladies and gentlemen. Basically the town's concerns with landfill in the

escarpment are predominantly a result of the inappropriate biophysical nature of the escarpment for this use.

The town of Milton has a total land area of about 38,000 hectares, and 20% of that is in the Niagara Escarpment plan area. The escarpment is the most prominent feature in the municipality, and Rattlesnake Point, which is owned and operated by the HRCA, is a highly recognizable location that attracts many rock climbers and tourists and is highly visible from Highway 401, particularly areas such as our Glen Eden Ski Area.

Approximately half of the Niagara Escarpment area consists of environmentally sensitive areas. These areas consist of the Hilton Falls complex, the Crawford Lake and Rattlesnake Point escarpment woods, Milton Heights and the Guelph Junction woods.

The Niagara Escarpment falls within the deciduous forest region, commonly referred to as the Carolinian zone, a reference to many species which have an affinity with the areas farther to the south. Because the deeper fertile soils in southern Ontario have been cleared for farming, examples of these Carolinian forests are limited to the escarpment areas and the wooded ravines.

Of all the lands within the Niagara Escarpment plan area and the areas northwest of the plan area, 95% of that area in Milton is either regionally or provincially significant wetland. The thin soils above the escarpment and the fractured nature of the Lockport-Amabel formation results in high infiltration of rainfall in this area. Portions of many of the small creeks are also captured by bedrock fissures, thus recharging our groundwater.

This is particularly common in the Hilton Falls environmentally sensitive area. As a result, numerous springs occur in the face of the escarpment, contributing cold water to the surface drainage network. Groundwater flow lines indicate major discharge zones along our Twelve Mile and Sixteen Mile creeks. The zones of significant recharge are located northwest of the escarpment brow, in particular in the area of Campbellville. In general, the flows go southeast from the escarpment. Much of the surface water in these tributaries travels towards the Twelve Mile and Sixteen Mile creeks to Lake Ontario.

The municipality takes its public water supply from three well fields. All are situated on the Milton outlier and are just one and a half kilometres from any quarry site.

One of the quarry sites we have, and we have eight of them in the municipality, is owned by Dufferin Aggregates, a subsidiary of St Lawrence Cement. The quarry is one of the largest in North America, about 1,150 acres of licensed area, of which about 950 acres is to be used for extraction. At its peak, the quarry supplied 30% to 40% of the GTA stone production. Approximately 1,200 trucks of stone left the site daily. There are other large quarries of the same magnitude that are owned by large firms, such as Lac Minerals, in our municipality.

Currently there are no landfill sites on the escarpment in Milton. However, waste management has become an extremely lucrative industry and certain companies could be tempted to pursue a Niagara Escarpment plan amendment to either locate a new facility in the escarpment area

or utilize an existing quarry for landfill purposes.

The town and other government agencies are currently working hard with quarries to prepare rehabilitation plans. Dufferin currently has an exciting proposal to create three rather large lakes with four artificial islands in the centre. Rock walls along the edge will be left to naturalize to habitat for birds, and wetland areas have already been created to regenerate certain parts of the quarry. The quarry will perform a stormwater management function as well as a major potential tourist attraction in future.

The town is very eager to ensure that the proposed rehabilitation is realized in about 20 years when the quarry has been completely mined. Plans will be required for the other seven quarries as well. Should waste management become a lucrative option for these quarry operators, it could undermine successful rehabilitation of these sites.

Furthermore, it seems that there has been sufficient negative experience with landfilled quarries in the Niagara Escarpment areas to support the government in specifying legislation that will preclude these uses from the escarpment and directing these uses elsewhere.

During the hearings on the Niagara Escarpment plan amendment 52, Hearing Officer Donaldson heard both anecdotal and technical evidence from residents and professionals. He heard from the residents of St Catharines with respect to leachate contaminants rising in the creek known as Leeward Court Stream beginning in 1983 and heard later of experiences with leachate fumes and methane gas in 1987, along with further leachate eruptions in and around the houses in their neighbourhoods in 1988.

The original decision to allow the Glenridge landfill to be situated in a quarry on the Niagara Escarpment had been based on assurances that the unique nature of the site, combined with the proposed leachate collection system, would prevent contamination of the local escarpment streams, but this has not proven to be the case. It is extremely difficult to prevent the escaping of leachate in fractured limestone, which is typical of the Niagara Escarpment. It provides the worst possible containment for landfill from a hydrogeological point of view, given the unpredictable flow of groundwater through the fractured limestone, so that the recovery of leachates through a collection system would be extremely difficult.

Given the types of waste we have today, the leachate can contain potentially hazardous chemicals. Contamination of the springs and seeps in the escarpment face can lead to water becoming undrinkable and vegetation die-offs, in addition to contamination of the groundwater supply for considerable distances below the escarpment. Often leachate is collected by hydraulic traps, which is a method of pumping groundwater to lower the water table along the landfill so the leachate can be collected.

However, the groundwater must be pumped for a period of decades or longer, and such a pumping leads to long-term lowering of the water table in the areas of the landfill. Such continued pumping can have effects of drying up the seeps and springs along the escarpment face, resulting in the loss of water in the escarpment streams and wetlands and a loss of groundwater supply

downstream from the landfill.

During the joint board hearing for the Halton landfill site, seven general principles were established with respect to siting landfill sites. They are:

- (1) The hydrology of the area must be comprehensible.
- (2) The loss of contaminants should be minimal, and preferably zero, as a result of either natural containment or engineered works.
- (3) Natural containment and attenuation of contaminants is preferred to engineered containment and attenuation.
- (4) If it is predicted that contaminants may move away from the landfill site, then the migration pathway should be predictable.
- (5) It should be demonstrated that the predicted leachate migration from the site will have no significant adverse impact on surface waters.
- (6) Monitoring to identify the contamination migration and escape paths should be straightforward.
- (7) There should be the highest possible confidence in the effectiveness of contingency measures to intercept and capture lost contaminants.

As you can see, the seven principles strive to reduce the unpredictability of contamination of surface water and groundwater. Engineered solutions are often proposed. However, the solutions are extremely expensive to plan, build and monitor. Should there be a fault in any of these three phases, serious contamination to the environment can occur. Consequently, any site should be weighted heavily in terms of principle number 3, which is that natural containment and attenuation of containments is preferable to engineered containment and attenuation.

1150

Engineered solutions are also subject to the vagaries of economics. Although it may be clearly the intent to adequately construct and monitor facilities to the highest degree of confidence, in poor economic times the quality may vary.

At the conclusion of the hearing, Donaldson weighed all of the evidence heard and was compelled to agree that the Niagara Escarpment plan amendment 52 should be approved. He observed that one way or another, leachate escaped from the Glenridge landfill site, causing long-term inconvenience and discomfort to persons living nearby as well as polluting the environment. The fact that Glenridge landfill site is located in a former quarry atop the escarpment was relevant.

The answers presented to the seven principles put forward by the joint board for the Halton landfill site in February 1989 were answered by experts both in favour of and opposed to the amendments. The answers varied but appeared to agree on the point that natural containment of contaminants at the escarpment sites is lacking and must rely on engineering, that the escape from the site of these contaminants is unpredictable and must be mitigated and that the interception and capture of contaminants at sites along the escarpment may be hard to detect and even more difficult to intercept.

The evidence heard seriously questioned the suitability

of the escarpment lands for siting of landfills. The conclusion of the evidence was that, despite careful engineering in the preparation and management of the sites, the escarpment lands are generally unsuited for the siting of landfills, due chiefly to the uncertainties for satisfactory containment.

The town of Milton's water supply is derived from three well sites that would be directly in the path of migrating ground and surface waters after they pass the eight quarries in the town.

The planning process in Ontario has already established the principle of land use segregation or prohibition of uses that clearly are not in the best interests of the community. The Environmental Protection Act and the environmental impact assessment process are insufficient to properly evaluate a proposal of this magnitude within the overall objectives of the Niagara Escarpment plan.

In February 1990, UNESCO designated the Niagara Escarpment as a biosphere reserve. The reserve is to perform three main roles: conservation of ecosystems and biota of a particular area; establishment of demonstration areas for ecologically sustainable land and resource use; and provision of logistic support for research monitoring, education, training and related conservation and sustainable uses. This designation clearly elevates the status of the Niagara Escarpment to a natural feature of global interest.

It is the objective of the Niagara Escarpment plan to protect unique ecological and historic areas and maintain and enhance the quality and character of natural streams and water supplies. Land use in the area is to be compatible with the purposes of the act and to provide public access and outdoor recreational opportunities. To prohibit landfill sites in the Niagara Escarpment area is quite consistent with the purpose of the Niagara Escarpment plan and is in keeping with its designation as a biosphere reserve.

David Hipgrave will speak on the cost issues.

Mr David Hipgrave: Good morning, Mr Chair and members of committee. The town of Milton is also extremely concerned with the potential costs of defending its point of view with respect to development of landfill sites in the Niagara Escarpment. Precluding such development through provincial legislation could potentially save the town tens, if not hundreds, of thousands of dollars. Recently Halton Hills was involved in a Niagara Escarpment plan amendment process that has cost the town in excess of \$750,000.

The town of Milton has also experienced its own costs in relation to what it judges to be illegal landfilling and composting facilities that grew incrementally as a result of pressures for these uses and the lucrative nature of these businesses. Many thousands of dollars have been spent and the hearings have not yet been completed. Under the current legislation, municipalities must rely on their own instruments provided to them through existing legislation, that is, official plans, zoning bylaws, to defend their positions. All of these are subject to appeal.

Hearings are now being fought on a technical planning level as opposed to broad policy directions. Armies of

experts are now required to respond to a myriad of experts retained by proponents, resulting in months of hearing time and expense. We have seen recently that this process has brought the OMB considerable difficulties in order to accommodate these hearings in terms of time.

We are also all aware of the effects that the social contract and expenditure control measures have had on municipalities. Even should municipalities be able to afford lengthy and expensive hearings, I'm sure and I know that we have other pressing needs to spend these dollars on for social good, rather than to oppose a development which obviously should not be permitted. The proposed legislation would bring about a greater level of comfort that is needed by municipalities to ensure that we will not be put in a position to have to respond in this manner.

The escarpment is a unique biophysical area that takes up a tiny proportion of the land area in Ontario. Surely sites could be directed to other lands in Ontario without a great inconvenience to future proponents.

We at the town of Milton are currently in the midst of preparing a strategic plan and a new official plan. Many of the public and the agencies that have been consulted—and we've consulted many people—reiterate the importance of the escarpment as central to the future of Milton from both an economic development perspective, as a valuable tourist destination, and to serve the town's residents in their pursuit of appreciating the natural environment. For these reasons, we would ask the Legislative Assembly to support and approve private member's Bill 62. Thank you very much, Mr Chairman.

The Chair: Thank you very much. Mr Stockwell.

Mr Stockwell: Thanks, uh, Rosario.

The Chair: Marchese.

Interjection: I'll turn the names around so you can see them.

Mr Stockwell: First, it's good to see David here again. I recall vividly at Metro, when we were searching for a landfill site, the input and knowledge that you brought to the table. I do understand the positions that you put forth, although it was a little bit different. We were looking for one and you're stopping one.

I would ask one quick question, though. I don't know if we can get into the engineering feats of this process, because I don't think this is the forum, and I doubt anyone at this table would be considered an expert with respect to the groundwater and so on and so forth. But you spent quite a bit of time on that, and the question that I have is on page 219 in the conclusions of the Ministry of the Environment's report:

"The ministry's prime concern is with the technical suitability of the proposed undertaking. The ministry is determined that the proposal to establish an engineered landfill in the Acton quarry meets ministry standards for acceptability in terms of groundwater impacts."

Now, they said, "Okay, go on to the next stage." I understand what you're saying is probably relevant, and in fact your thoughts exactly. But the question has to be put: If you, as a municipality, ended up making a decision or moving forward on an issue and the province

jumped in and stopped you cold without any compensation, I wonder what your reaction would be.

It's probably more of a political than an engineering question, but having said what I've said with respect to the Minister of the Environment's report—this government's minister—if they jumped in and stopped you cold on some issue that you felt was very important, how is it that you'd react to such a situation?

Mr Krantz: Inasmuch as it was referred to as probably a political question, being of political background, and again not a novice in it either, I rather suspect that I would certainly react to defending my turf, our turf—I refer to that as the town of Milton in this instance, and certainly the region of Halton—as to how it would affect our groundwater that has been referred to. I'd react to it violently if I thought for a moment that it was going to impede the wellbeing of a community: the town of Milton, the region of Halton.

Mr Stockwell: The question then springs quickly: Would it not make more sense to force this through a full environmental assessment under the Environmental Protection Act than what I believe to be the situation of opening up this province—and I'm not certain the Ministry of Environment supports it any more—to a potential horrendous lawsuit? Without doubt, in my opinion, you're opening yourself up to a horrendous lawsuit by passing this very site-specific piece of legislation.

Mr Krantz: I certainly can't refer to the legalities of it. I don't profess to be of a legal mind. But certainly what I do profess to react to is the very genuine concerns of people in the town of Milton and the region of Halton. Again, I don't profess to be an expert on what happens across the province, but I can assure you that I would like to think of myself as an armchair expert on what happens in the town of Milton in the region of Halton, dealing with landfill issues.

Mr Murdoch: You have no trouble with Bill 120.
1200

Mr Malkowski: That was well presented. I'd just like to respond with a couple of comments before I ask my question. I was born and raised in Hamilton but I grew up in Milton because I went to the school there and I know the Niagara Escarpment and the Kelso Conservation Area. It's something I enjoyed growing up with. It was part of my education. It's something I want to preserve. That's part of the reason why I'm sensitive to the environment.

The Kelso Conservation Area and also the Bruce Trail—when I was young, myself and a number of my friends used to enjoy those. We'd go out. It's something I want to see continue for the future, not only for people who go to school there but also for the people who live in Milton. Thank you for your hard work on this.

Another thing: You know that the opposition members seem to be trying to use, I don't know, in their questions some kind of scare tactics. Perhaps we're not quite paying attention, but I want to talk about a more non-partisan approach to this issue because this is the environment after all.

If you were to arrange a tour for us, let's say, or some

of the Environment critics in the opposition parties and us too and the members of the standing committee to come and see for ourselves, it might change some minds. I don't know if you've contacted any of the Environment critics in the opposition parties to find out what their response would be to actually coming out and seeing.

Mr Krantz: Certainly I'd have no problems as far as the municipality is concerned with arranging such a tour; I would actually encourage that.

I can also share with you one of the other hats that I wear as an elected person, as one of Milton's representatives on the Halton Region Conservation Authority. I suggest to this group that I am quite familiar with that portion of the Niagara Escarpment as it goes through our watershed. I do not just talk about political boundaries—the town of Milton, the region of Halton—but a watershed. I would certainly attempt to make that available for this committee or anyone else who was interested.

The Chair: Ms Haeck, if your question is short, we can do it; otherwise, no.

Ms Haeck: Actually, it's just a short comment. I want to thank the members from Milton for bringing to the attention of all—I'm not sure if "thank" is the right word, but definitely I appreciate the fact that you've brought forward the Glenridge landfill. I know the members from the city of St Catharines are coming later but it's in my riding and you have ably described the plight of my residents on Leawood Court. Mrs Matthews is coming before this committee on Wednesday at 10 to explain what has happened to her as a result of the leachate migrating into her house.

I did want to make a short supplementary to page 4. At the bottom of the top paragraph, you were talking about the pumping of the leachate and trying to deal with the seeps and what have you. What has happened in St Catharines is that the pumping trying to deal with the leachates has in fact resulted in sort of deep groundwater wells being tapped. As a result of this, a very salinated water has come up and there is some concern about the vegetation on the escarpment.

I think people should understand that some of the engineering solutions are not only costly but also dangerous. I think you have ably described some of these concerns. Thank you.

Mr Chiarelli: I have a very precise question. Over the last five to 10 years has the town of Milton ever taken a planning decision to completely ban dumps in the escarpment and, if not, why not?

Mr Krantz: Certainly, as I recall just from memory at this point, we have taken the position on not encouraging, not supporting and—I will stand corrected—on discouraging dumps from locating in the escarpment, anywhere in the municipality. I can only suggest that we're no novice to it. I can assure this committee of that.

Mr Chiarelli: But we have a private member's bill which has taken the initiative to ban dumps in the escarpment. Why has your municipality not done that within your area of responsibility in an official plan or some decision that would simply say, "We do not permit in this municipality dumps in the escarpment"? You have

not taken that decision up to now. Why have you waited for a private member's bill to do that?

Mr Krantz: We've tried every which report. Again, I heard suggested earlier on partisan politics being involved in it. I've tried now with three governments to do that very thing. I don't care how it's done, just as long as it's done.

Mr Tim Murphy (St George-St David): One quick question, if I can: The resolution that was passed at your council basically says, "We want to ban landfills in the escarpment." I don't know whether you've had a chance to look at the revision.

I'm wondering if your concerns would be satisfied with something that would be quite a bit more simple and basically reflected the much more simple wording you have, which is, let's say, "No dumps in the escarpment." This is quite a bit broader than that, I think. I'm wondering whether you're satisfied that this achieves your goals or is too broad. Would you be happy if it just said, "No dumps in the escarpment"?

Mr Krantz: On seeing that document just a short while ago, Mr Iovio, Mr Hipgrave and I got our heads together for a very quick few moments. I think it would be safe to say that we generally support it, from what we could derive from quickly reviewing that document. I know that sounds like a political response, and it is.

The Chair: Thank all three of you for taking the time to come and make your presentation to us today.

Mr Perruzza: Mr Chairman, I move that we break.

The Chair: Mr Offer has a motion.

Mr Offer: Thank you very much, Mr Chair. I'm going to move a motion in light of some of the discussion that went on this morning. I think it's important for all of the people who are here as well as the committee members.

I move that the committee request the Minister of Environment and Energy to attend before this committee or to provide in writing the government's position on Bill 62 prior to the conclusion of the hearings of the legislative committee on administration of justice, which shall be no later than February 16, 1994.

Just by way of very brief comment, I think it is important for all of those people who have come before this committee on a position on Bill 62, and in light of Mr Duignan's first answer to my question yesterday, that we do receive the position of the ministry. I recognize that on short notice it might be difficult to get the minister here and that is why this motion has also stated that the government's position in writing would be sufficient.

Mr Perruzza: I move that we call the question.

The Chair: I want to see whether there's further debate on this, Mr Perruzza.

Mr Perruzza: You can't do that. You've got to vote on my calling the question.

The Chair: There has not been sufficient debate to call the question. I would prefer to see whether there's any disagreement or agreement on this as quickly as we can and then move to a vote. Mr Stockwell, are you in

agreement with Mr Offer's tabling?

Mr Stockwell: I would be in agreement with that motion. I would ask just a clarification. He's asking for the minister or a letter from the minister?

The Chair: That's right.

Mr Stockwell: Okay. If that answer is no, I would ask then that we can revisit it because if the minister can't even give us written notification, which I could see being a problem, I wouldn't mind having ministry officials then at least, if that can't be done.

Interjection.

Mr Stockwell: Yes, just a simple amendment to it.

The Chair: So that would be minister, ministry, ministry official?

Mr Stockwell: No, no, let's just rank them. I want to see the minister or I want to see the—

Mr Murphy: Let's just move another motion.

Mr Stockwell: Fine. Then I can wait if they say no. Because I think this is turning into crass politics by the local member and the government. They refuse to take a position on this, leaving us in the situation of having to bring forward deputants from the member's riding. It's nothing more than crass politics because if the government isn't going to support this, then it's not going to get third reading and we've just wasted a whole bunch of people's time.

Mr Duignan: Call the question, Mr Chairman.

The Chair: I think we're ready for the question.

Mr Chiarelli: Are you going to gag your own government?

Mr Offer: Recorded vote on this.

The Chair: On a recorded vote, all in favour of the motion?

Ayes

Chiarelli, Murdoch, Murphy, Offer, Stockwell.

The Chair: Opposed to the motion?

Nays

Akande, Duignan, Haeck, Harrington, Malkowski, Perruzza.

The Chair: The motion is defeated. This committee is recessed until this afternoon at 2 o'clock.

The committee recessed from 1209 to 1413.

PROTECT OUR WATER AND
ENVIRONMENTAL RESOURCES

Ms Barbara Halsall: My name is Barbara Halsall, and I'm past president of POWER. That stands for Protect Our Water and Environmental Resources. Our citizens' group formed in 1987 and incorporated in 1989. Someone suggested here this morning that Mr Duignan had whipped us into a frenzy. I think we've been whipped into a frenzy for a long time, ever since RSI brought this proposal forward.

The group came together when a landfill proposal for the Niagara Escarpment was announced. As a matter of fact, the citizens were really shocked to find that what they believed was a protected area could be targeted for landfill. We found that the people who were concerned

and came together were concerned about the environment in general and about the Niagara Escarpment in particular.

I should mention that the RSI licence, as they preceded me, is for all of Ontario. If you've got an area set aside as special, to bring garbage from all of Ontario just boggles the mind.

POWER has held environmental conferences, worked to raise community environmental awareness. We were accredited by the United Nations. Last year, I received the Environmental Literacy Award from the Halton Board of Education for my work with schools.

POWER spent over \$20,000 to participate in amendment 52 to the Niagara Escarpment Planning and Development Act, and for a group that raises money through bake sales and garage sales, that's a lot of muffins. I say that so you'll understand we're serious about protecting the escarpment. Some of our members, trying to demonstrate a solution for garbage, established Waste Wise, which is a resource and recycling centre with an ongoing flea market, and I urge you all to visit that in Georgetown.

There was a question about whether this whole thing would apply to septic systems. If you check the legislation, you will find that there are definitions under part V, section 25, of "waste management," and then 26 says, "This part does not apply to the storage or disposal by any person of the person's domestic wastes on the person's own property unless the director is of the opinion, based on reasonable and probable grounds, that such storage or disposal is or is likely to create a nuisance, or to any sewage or other works to which the Ontario Water Resources Act or the regulations thereunder apply." So I think we can lay that concern to rest.

The purpose of this, as I see it, is that the Niagara Escarpment is different, is special. Its ecosystem, the water it contains, needs the safeguards of Bill 62 so it can be enjoyed by generations to come. I'm confident that when you have a full understanding of the information I'll present, together with what you hear from other supporters of the bill, you will appreciate the importance of the escarpment. I'm sure that what you'll hear will cause you to not only support the bill but urge its quick passage at third reading. Please do not delay passage, or you will find there are proponents of landfills who rush to bring their proposals forward because you have not used Bill 62 to close that opportunity off.

I hope you have received the handouts which give the percentages of municipalities that come under the Niagara Escarpment plan. I thought we should mention that at the outset. There seemed to be a great deal of confusion, and I think Mr Murdoch felt he was the most hard done by of any area because there was such a large portion under that jurisdiction. When you see the numbers on paper, you will see that Halton has 22.8% and Grey has 14.2%, which is substantial. But if Halton can find a landfill and do it outside the plan area, which we have done, probably others will manage to do the same.

1420

I have some slides with me. The authors of this

beautiful book were unable to appear. They are on Saltspring Island out in BC. They sent a few slides along so you would have an appreciation of what we're talking about. We get inside these bricks and steel and we can't see the outdoors, and it's very hard to imagine what we're talking about.

This first slide is not from Pat and Rosemary Keough. This slide is from a quarry in the escarpment. As you can see, it's a massive size from the air. Another view of that same quarry.

This is Tews Falls, down near Dundas.

Here we have the Calypso, which is called by most people the Fairy Slipper.

This is a pitcher plant from the Bruce Peninsula.

Someone who is part of the Halton-Peel Field Naturalists gave me something he had written, and I think it's appropriate to read it at this time. Don Scallon is not only vice-president of the Halton-Peel Field Naturalists; he is a teacher and cares deeply about the environment.

He says: "We are not exempt from the laws of nature. We can't eliminate its components without consequence. Ready contact with natural systems helps us recognize this interconnectedness. Contact with nature engenders respect, love and commitment to save it and, thus, ultimately ourselves. One of the finest places to connect with nature in southern Ontario is the Niagara Escarpment."

The escarpment, as you may well know, runs through the most densely populated area of Canada, so actually six million people live within a 90-minute drive of the escarpment.

This slide here is an escarpment overhang. This is a view from the escarpment at the forks of the Credit.

This is Inglis Falls in Owen Sound.

Here we're atop the escarpment at Driftwood Cove.

This is the Beaver River between Kimberley and Heathcote.

This is an interesting one. It's Devil's Punch Bowl, Stoney Creek. It illustrates the fractured limestone, because we have so many seeps of water coming through, forming those icicles. Here's a second picture of that same area up a little bit closer.

Here we have DeCew Falls near St Catharines.

This is a sea cave on Flowerpot Island.

Lastly, the picture that was chosen for the cover of the book, Flowerpot Island.

You can see we're talking about a very spectacular area. The escarpment is unique; that means one of a kind. This protection was supported by all parties. Everyone has reminded you of that.

The biosphere designation: I was present at the ceremony when Dr Frederico Mayor was there and the presentation was made to Premier Peterson. A biosphere reserve conserves examples of characteristic ecosystems of some of the world's natural regions, putting our natural wonder on a par with the Galapagos Islands.

It seems significant that we're considering this bill today with Heritage Week less than a week away. Bill 62

will preserve some of our natural world to leave for the future citizens of this province and Canada. The escarpment is the birthright of our great-grandchildren and their great-grandchildren. Bill 62 builds on the legislation already in place. Halton region did a very good chronology of some of that.

Under the original Niagara Escarpment Planning and Development Act, the door was left open for landfills under the list of permitted utilities. Amendment 52 was brought forward to address that problem. The whole idea for fixing that error came from our former MPP, Walt Elliot. Amendment 52 was recommended to cabinet after approximately five weeks of hearings.

We had everybody there: city of St Catharines, Niagara Falls, town of Halton Hills, region of Halton, Halton Region Conservation Authority, Walker Bros Quarries, Steetley quarry, Reclamation Systems Inc, Glenridge Landfill Citizens' group, Greensville Against Serious Pollution, POWER, the Flamborough chapter of the Conserver Society, the NEC, as well as five other individuals. The witnesses included three planners, two hydrogeologists and a professor of biology.

After all the evidence was presented and all the witnesses were heard and everyone was thoroughly cross-examined, the recommendation from the hearing officer was that the words "waste collection, disposal or management" be removed from the definition of permitted utilities because waste disposal is incompatible with the purpose of the Niagara Escarpment Planning and Development Act.

The purpose is: "To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment." If we're to be consistent with the purpose of the act, garbage dumps do not belong on the escarpment plan. I hope we don't have to repeat that whole hearing—that took five weeks—here this week. Sometimes it seems like we are.

The cabinet recognized landfill as being incompatible with the protection of the act by passing amendment 52, signing it in May 1992. This bill is the logical progression from policy to legislation. It's efficient because it will cause proponents to focus on areas that will cause less damage. It's effective because it will provide the necessary protection for the escarpment.

The escarpment is more than just a pretty place. I know when you see all these pictures, people are saying, "Oh yes, there it is, and we've seen it before." Some people maybe have seen it too often because they don't know what they're looking at any longer. Water is the most important resource we have in the world. No plant or animal can exist without water. Believe me, I've tried it with my house plants, and when I don't water them, they die.

Very often one of the issues we think separates us from the Third World is that we have safe water. Exotic chemicals finding their way into more and more of our water supplies cannot be removed. Water is a finite resource. There is no more water now on earth than there was millions of years ago. I like to tell students when I

go out to talk to schools that we're drinking the water the dinosaurs drank, which is quite a startling thought.

There are two aspects to the water situation. There is groundwater, and surface water.

The surface water is easier to understand because for the most part we can see it. Although some surface water is fed by underground streams, the escarpment is the headwaters for many of the river systems of southern Ontario. How can we in all conscience knowingly, and I say knowingly, place a major source of pollution at the headwaters of our major river systems? At our local Acton quarry, two watersheds divide. Water flows down to Sixteen Mile Creek through Oakville; water flows to the Credit River system where Ministry of Natural Resources has re-established the salmon population over the last few years. Just 1.5 kilometres from that same quarry, water drains into Blue Springs and down through the Grand River system. If a subversive agent wanted to target an area that would do the most damage with a dump, I think we've found it. We've got three river systems right there.

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The groundwater: The escarpment is also an important water recharge area for some of our major aquifers such as the Guelph aquifer and the Amabel aquifer. The porous nature of the escarpment—I usually describe that rock to students as being almost like a sponge because of the many cracks and openings in it. You saw that in the slide with the icicles hanging down, that the water just pours out of that rock. That rock tilts to the west and that means water seeps down to the water table and extends far beyond the plan area.

When I first became involved, it was because of my concern over water contamination. I contacted Dr Cherry from the Groundwater Institute, University of Waterloo, and from the information I received, it's clear that once an aquifer is polluted, you cannot return it to its original state.

There are places where they've tried to clean up, and one example is Mercier in Montreal, and millions of dollars and five years later the water is not drinkable. The environment is a little bit like Humpty-Dumpty: If we screw it up enough, all the king's horses and all the king's men will not be able to return it to function.

People all along the escarpment drink water in rural wells and through municipal wells. If we pollute our major aquifers, what will the cost be to municipalities, to the province? Would we choose to risk the water that's used by so many people? William Ruckelshaus, a former administrator of the United States Environmental Protection Agency, testified at a public hearing in his new position as CEO for Browning-Ferris Industries, and I quote, "All landfills will leak." I think this man knows something.

As drinkable water becomes more scarce and more precious, we cannot afford to risk the irretrievable loss of water in the major aquifers that are fed by the escarpment. In the case of RSI, their engineering—which, according to Mr Mills, we haven't seen yet, so I guess they've changed their environmental assessment docu-

ment—is unproven. We're not going to be the test case.

The engineers, who are so competent, their own preliminary feasibility study said that water under the quarry flowed this way, and now we know that water flows that way. They based their feasibility on whether to go ahead on incorrect information.

At the moment there is a consolidated hearing taking place in the Greensville area, and at that hearing the proponent of the landfill testified that the polluting life of the landfill will be 300 years—300 years. I don't think we can really grasp that.

Last week's edition of US News and World Report tells us that scientists are now investigating the link between breast cancer and environmental poisons. In fact, the National Institutes of Health in the US has just held an entire conference on that topic. What are we doing to the planet, we as human beings? What are we doing to ourselves?

There's a recent advisory from Cayuga that NDMA has been discovered in the municipal treated water supply at three times the maximum acceptable limit. It says the citizens are advised not to use the municipal water for drinking or cooking. We don't want to have more of those kinds of stories. We don't know yet where the pollution came from, but we can guess: If you put NDMA in upstream it will flow downstream.

Both of my parents died of cancer. If the last six years I have donated can save one person from going through that kind of hell, it's been worth it.

If you're against Bill 62, you're in favour of protecting a frivolous application. A frivolous application is an application for a site that's completely unsuitable. Would you support an application in Lake Ontario? Certainly not. One in the middle of the Grand River? Absolutely not. But what about one at the headwaters of our river system? Logically, if legislators hope to protect the water, you must say no once again.

If we're all agreed that an application is ridiculous, it only makes good sense to have clear rules for the proponent. Without clear rules, a frivolous application triggers the whole EA process, which is incredibly lengthy, painful beyond belief, and can bleed a small community dry as it tries to prove the obvious: that garbage does not belong in the escarpment.

Someone asked, "Why doesn't Milton just have an official plan amendment?" Well, what would happen? It would go to the OMB. Then it would be part of a consolidated hearing, and there goes the money all over again.

We need a vision, and you as legislators need a vision. What did the escarpment look like 100 years ago? What will it look like in the year 2094? We need a vision beyond the next election. If you believe, as I do, that we must leave something for future generations, then you must support this bill. What will you as legislators be remembered for?

The great cathedrals of Europe in many cases took over 100 years to build. The builders knew they would never see the building completed, but they toiled on their whole lives because they had a vision of what could be in the future. I ask you to have that vision today. The

Niagara Escarpment is recognized by the world. It is what Ontario is known for internationally and it's our cathedral for future generations.

Mr Duignan: Welcome to the committee hearings, Barbara. Thank you for making the presentation. You've added everything, you've said everything, and you made it crystal clear why people should support Bill 62. Have you had an opportunity to review my proposed amendment and have you any comments on it?

Ms Halsall: If POWER wanted to say absolutely what we think about it, we would probably like to review it with our lawyer. The way these things are written, one never knows what you've just agreed to and what you haven't agreed to.

Under amendment 52, I think the idea was that there would be local, small things. Anything that becomes large doesn't belong there. I would be concerned about adding future waste to sites. There's a leaking quarry: the Steetley quarry in Greensville is an absolute mess. It's supposed to be closed. That company thinks it needs four more years of garbage to make it better. I would worry that this might open the door for something like that. And I kind of liked what Mr Lindgren from CELA and CONE was saying the other day, that perhaps the MOE already had some of the powers to deal with the situations that might arise.

Mr Duignan: I appreciate your comments.

Mr Chiarelli: Obviously, I'm very impressed with the level of public support for this bill. Mr Duignan is obviously in tune with a lot of constituents and beyond his riding as well.

I want to ask a question or two about the process. We find ourselves here now before a committee on a private member's bill. You described some of the processes you were involved in, the money you spent as a group. I don't know whether you had intervenor funding or not.

Ms Halsall: If you find out about intervenor funding, it comes to so little you wouldn't recognize it.

Mr Chiarelli: What I was interested in is the level of resistance your group has found in the process to getting to a point where, in effect, dumps will be banned in the escarpment.

I was the one who asked the question about an official plan. You obviously have a number of municipalities. They had the authority to incorporate into their official plans a policy that says there shall be no dumps in the escarpment. My understanding is that, at least in the case of Milton and the other municipalities, they have not passed such an amendment that made an absolute ban in the escarpment.

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We have the Ministry of Environment having been involved in the process with this particular applicant or group interested in this particular site. There seems to be not a lot of movement on the part of the ministry in terms of providing a satisfactory solution to what your group is lobbying for, and all these members of the public who are here today and have sent in letters of support. Maybe I'm not precise with my question, but—

Ms Halsall: I'm searching for it.

Mr Chiarelli: Is it satisfactory for you to have to rely on the uncertain process of a private member's bill on something that's so important to so many people, when we are finding that we can't get confirmation whether the ministry is in favour of it or not? What that does is water down the weight of the argument when it gets into the Legislature, that the ministry's not on side, that people in the communities, for example, have not passed official plans banning the dumps.

Ms Halsall: Many municipalities have passed motions of support for this bill, and I'm sure that will be presented to you later. I'm aware of quite a long list. But you're saying, what about the ministry? Gosh, I don't know a whole lot about what goes on down here, and sometimes I'm glad I don't, but it seems to me that if the Ministry of Environment were to pick up this bill now and perhaps reword it to make it slightly different, we would be back starting all over again, and I don't want to see this start all over again. If the ministry wants to wait and let it go to the Legislature and let people pass it, that's just fine with me. If you're worried about it getting to the Legislature and not passing there, there are people who will beat the legislators over the head until they have a firm understanding of what's important here.

Mr Chiarelli: I'm concerned about the process. I think I'm looking at this objectively. I'm from the Ottawa area, and I don't follow the local planning processes and the details of the environmental matters that happen, for example, in your particular community. I'm looking at the information coming forward. I've been very active in my own area with a lot of citizen groups on issues, municipal board hearings etc. I know what the process is like and how frustrating it is. You now are relying on a private member's bill. Why could you not have relied on previous decisions by municipalities banning dumps, not reacting to a private member's bill? Why could you not have relied on those and why can you not rely on the ministry?

Ms Halsall: Even if there were a plan amendment that banned landfills within a municipality, would that not be appealed to the OMB, would that not be part of a consolidated hearing?

Mr Chiarelli: I'm saying that an official plan goes to the OMB and it's approved. If that ban were approved in an official plan, in those municipalities that did that, the ban would have existed long before the private member's bill.

Ms Halsall: It was an error. It wasn't done. Gee, I wish they had, but now we've got to deal with what we're stuck with.

Mr Stockwell: With respect to the groundwater discussion, you've read the preliminary hearing that was conducted by the joint board, June 1 to 11, 1992. Their comments do not agree with your statements with respect to the groundwater. The impact as outlined by the government in conclusions on page 219 said: "The ministry's prime concern is with the technical suitability of the proposed undertaking. The ministry has determined that the proposal to establish an engineered landfill in the Acton quarry meets ministry standards for acceptability in terms of"—

Ms Halsall: I've read that. Do you want my comment on that?

Mr Stockwell: How come you and the ministry are singing a different song?

Ms Halsall: I think the person who reviewed that is wrong, quite frankly. If you're going to blast in a quarry for 30 years and tell me there are no cracks in the bottom, I've got property in Florida that's under water that I could sell you. I just don't think that is reasonable. We've got just as many experts we can line up on the other side who will say they don't get the picture on this.

Mr Stockwell: But with all due respect, it's the ministry staff, who have not offered any support for this legislation, who have commented on it and said it's worthy to continue.

Mr Perruzza: Oh, there he goes again. What's the point?

Mr Stockwell: I'm not arguing with you. I'm just telling you what the ministry has said.

Ms Halsall: That one person at the ministry said.

Mr Stockwell: But how about the ministers themselves who've allowed this to go forward from the cabinet? They've had an opportunity to kill this.

Ms Halsall: Jim Bradley had an opportunity to kill it. This has been going forward for ever. I'm not going to get into what the ministry did or didn't do. I'm looking at what we're dealing with now. Is the escarpment important? Should we have landfills in it? Do we want to pollute the water? I don't, and I think it is important.

Mr Stockwell: With all due respect, I don't think you'd have much disagreement with respect to the pollution of the water and whether we want to? Of course not. But there are many municipalities in this province, and I'm not sure I can find you one that thinks putting a landfill in their municipality is the route to go.

Ms Halsall: I think there's one.

Mr Stockwell: Well, I can show you one, and it happens to be in a quarry that they want to put the landfill. I can also show you hundreds and hundreds of municipalities that would come forward, much as you've done today, and say, "This is the wrong place to put a landfill," and give you reams of information why.

Should landfills go through the proper process, be examined by experts based on their suitability, rather than on local members putting a private member's bill before the Legislature saying, "Hey, my municipality's out; you can't put a landfill in Halton," "My municipality of Etobicoke's out; you can't put a landfill in Etobicoke," "You can't put one in the Rouge." You can't put one anywhere in a lot of these spots. Is that how we should handle the whole process?

Ms Halsall: For the municipalities where the Niagara Escarpment is concerned—the Niagara Escarpment legislation was brought forward by your government. It was their idea, and everybody said wow, and "Aren't they far-thinking?"

Mr Stockwell: But they didn't say no landfills.

Ms Halsall: That was an error. We're dealing with less than 1% of Ontario; if you look at that sheet that was

handed out, it is 0.17% of Ontario. We're saying, "Out of that little, little bit, please don't put garbage there," and we've got people here who are saying, "Gee, isn't it the only place to put it?"

The Chair: We've run out of time. Ms Halsall, thank you for your presentation today.

JANICE BROOKS

HARVEY KIRKWOOD

The Chair: I invite Ms Janice Brooks and Mr Harvey Kirkwood. Welcome, and begin when you're ready.

Ms Janice Brooks: I'd like to let Harvey go first.

Mr Harvey Kirkwood: Janice had originally intended to go first. I thought, "Here we have a case of beauty and the beast," and we have now a reversal of it, so we go from here. Sorry. Already I'm getting nervous.

I appreciate the opportunity to speak today regarding Bill 62. I had some concerns about doing this today because I'm an older person, probably the oldest person in the room, but I have lived on the escarpment for a long time. My wife and I have lived near or on the escarpment all our lives. Our early life was spent up in the Caledon area near the escarpment, and the last 43 years we have lived in Acton beside the proposed RSI dump. I thought because of my concern I would try and do this today.

My wife and I have lived on or near the escarpment all our lives, and for the past 43 years we have lived near Acton. A quarry has been operating next door to our farm since 1961. In past years, there were two municipal dumps operating in the area adjacent to the escarpment. These were both closed in the early 1970s.

In 1972, Indusmin, which then owned the quarry, made plans to use it as a solid waste site. These plans were abandoned after further study. Then, in the early in 1980s, Halton region also rejected this quarry in its search for a landfill. Now Reclamation Systems Inc is again proposing this same quarry site for a solid waste landfill to accept garbage from anywhere in Ontario.

The Niagara Escarpment is a unique landform that has been recognized as being significant. It was our provincial government that formed the Niagara Escarpment Commission to protect it. The commission's mandate is to maintain the escarpment as a natural environment for future generations. Two years ago, the Niagara Escarpment Commission passed amendment 52, which would prohibit garbage dumps on the escarpment without an amendment to its planning act, but this does not stop the proponents from applying and putting the province through these expensive and lengthy environmental assessments.

Because the escarpment is rich in aggregate, it has in the past been exploited for its aggregate resources to accommodate the rapid growth of southern Ontario. The escarpment is dotted with giant holes left by these quarries. Upon completion of a quarry, they should be rehabilitated to their natural state, as was set out in the licence. Unfortunately, many of these quarry owners are seeing an opportunity to further exploit the escarpment by filling these holes up with garbage to rehabilitate them, so-called.

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Several years ago, it was declared a biosphere reserve by the United Nations, being a distinct honour. The escarpment represents only a narrow ribbon of land running through the centre of the province, from Niagara to Tobermory. Surely our Legislature can protect this area from being used as a dumping ground for the province. By passing Bill 62 at third reading this Legislature will be taking a step in that direction.

Regarding amendments to the bill, I would advise caution in case the original intent is lost or diluted in the process. I am sure you are aware of the seriousness of the situation. I hope, as Mr Elliot expressed yesterday, that all members, regardless of political feelings, work together for the common good this time. I was rather shocked by the display that seemed to indicate otherwise before the noon break, but maybe that was just a short thing and it might pass. In the past, at times I have supported all the parties, as I saw fit.

As I mentioned earlier, my wife and I have lived for 43 years on the escarpment and prior to that near the escarpment. Strange things happen in rock formations. We have a strange problem on our own property. A dried-up pond on our place, due to the pumping from the quarry nearby, fills up in the spring with surface runoff water from the snow and rain. That water drains to the basement of a nearby house, which happens to belong to my wife and me. We have to put a three-inch pump in there. We've searched as diligently as we can. We don't know where the water leaves the pond, but we know it comes to the basement of the house, which is about 500 or 600 feet away. Because we keep that pump going until the pond lowers, and then just an ordinary sump will keep it out until the pond is dry, we know it comes through the rock formation. Of course, that's up on the Amabel and we know they're down on the lower Cabot Head, but it just shows you how rock formations do leak.

Looking around the committee today, you all being younger people, I don't imagine there are very many in this room who remember Hurricane Hazel. How many remember the night of Hurricane Hazel? Do they remember where they were at that time?

Mr Murphy: It was named after my mother.

Mr Offer: Well, in Mississauga, we think it was named after someone else.

Mr Kirkwood: Anyway, we lived there at that time. There was mined-out limestone where they made lime then, but there wasn't anything like there is now. I can just picture what would happen to that area if it were filled with garbage and we had a night like Hurricane Hazel. Of course, everybody will say this only happens once in a hundred years. But we know it might not be a hundred years; it could be next year. What would happen to the garbage in there if we had that situation? That worries me because of future generations.

I have quite a stake in the future. My wife and I have six children and 16 grandchildren. They all live on the escarpment. This is a very vital concern to me, as well as for the whole area, because I firmly believe, having worked in the quarry and having observed the water

patterns and the pumping in there over the years—I worked for Indusmin quite a while there—there's so much left to chance.

I'm just getting at a loss for words, so Janice, being a younger person, I'll let her go on and then we'll try to answer any questions.

Ms Brooks: Before I commence my presentation, I would like to thank you for allowing me to speak here today.

My name is Janice Brooks. I'm 16 years of age and in grade 10 at an advanced/enriched level, with some grade 11 courses, maintaining an 85% average.

Due to my growing up and living within the Niagara Escarpment plan area, I have a very avid interest in its protection for today and for years to come. My interests have taken me on many very exciting experiences from which I have learned a lot. I have been involved in an environmental protection project since the age of 11, and I regularly attend meetings and presentations on these topics. I particularly have special interests in politics, law and French.

This past September I was honoured to be one of eight 15-to-17-year-olds from the province of Ontario to travel to Ottawa to join students from across the country at the program Encounters With Canada. During this week-long stay at the Terry Fox Centre, we studied law, politics and French.

En septembre passé, j'ai eu l'honneur d'être une des huit personnes, âgées entre 15 et 17 ans, de la province de l'Ontario à voyager à Ottawa. J'ai participé dans le programme Rencontres au Canada, avec des élèves de partout au Canada. Pendant cette semaine au Centre Terry Fox, nous avons étudié la loi, la politique et le français.

This coming May I will be attending the Hugh O'Brien leadership conference in Mississauga for high-academic-standing students from across central Ontario.

I learned that the subtle beauty of the area in which I live was created in part by the Niagara Escarpment. The majesty of its aesthetic beauty has been a force that has driven me to help protect it.

Many rare and beautiful life forms are found within the Niagara Escarpment plan area. This beauty and rarity has brought the United Nations to proclaim the area an international biosphere reserve. This recognition is special because it says this area is ecologically unique and must be protected. All of these are reasons I support Bill 62, the banning of landfill sites within the Niagara Escarpment plan area. I also feel that this bill is not a site-specific bill.

As I speak to you today, I would like to give you a picture of what the future would be like if landfill sites are permitted on the Niagara Escarpment. There are many damaging results that you would not see in your generation, but my generation will.

The Niagara Escarpment is facing many threats, but none as real and with such disastrous consequences as putting landfill sites atop it. Landfill sites are areas of land that have been dug out by mining or specifically for the purpose of filling with garbage and refuse.

First, I would like to give you a few facts about landfill sites and the Niagara Escarpment. The Niagara Escarpment as I am going to refer to it is not only the rock faces, steep cliffs and sea stacks such as Flowerpot Island, but also the flora and fauna, animals and people who live and work there. There are over 300 kinds of birds, 90 types of fish and 100 different species of plants. This unique ecosystem is what has earned the Niagara Escarpment the title of being one of only 300 international biospheres in the world.

The Niagara Escarpment is a very important water collection and filtration site. The rainwater falls into the highlands, and as it flows into lakes and rivers it is filtered by rocks and swamps. These remove many of the impurities found in rainwater. In the Niagara Escarpment plan area, water is often found as close as 10 feet, or three metres, below the earth's surface. Water that flows from the Niagara Escarpment is a source of drinking water for many millions of people.

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This garbage which will be shipped from many areas to landfill sites is not only very unsanitary but is a lure to rats, mice, roaches and gulls and many other scavengers. These scavengers would spread waste and disease all over our fields and towns. Trucks carrying this waste to landfill sites often leave trails along our roadsides and on private property, causing a loss of property value.

"Landfill": Let's correct this misnomer right here. Landfill would entail placing land in a fill area. What we really have here is wastefill sites. These facilities are usually placed in old strip mining operations or a hole dug in the earth's surface specifically for placing refuse in.

Everybody thinks, "I don't want a wastefill site in my backyard." If this is so, why would somebody want to put a wastefill site on the Niagara Escarpment? The Niagara Escarpment should be considered everybody's backyard, because when it comes to placing wastefill sites atop it, it's everybody's responsibility and everybody will be affected.

If wastefill sites were placed on the Niagara Escarpment, the environmental damage will be thousands of times worse than the pollution from wastefill sites in better locations. Why is this, you ask? When a pit is dug for a wastefill site or a wastefill site is put in a quarried-out pit, there is a need to seal up all entrances of water. How can you do this if the formation you are relying on is fractured limestone? You would expect that one would look to the best geological formations, such as granite, and not to limestone, one of the worst.

If a liner is placed in the pit, for example, how are they going to allow for pressure of water from the outside? Sooner or later the water is going to break through, and when it does, it spells major ecological disaster. The toxic soup of leachate will travel into the groundwater and into lakes and rivers. This toxic soup will travel underground and above ground, first polluting the water of nearby residents. By this time, there will be absolutely no way of stopping this disaster. The water will continue to flow and this toxic soup will have polluted all of southern Ontario, southern Quebec and parts of western New York and Michigan states. After that, nobody knows

how far this pollution will travel.

If this pollution were ever to happen, and it won't if our provincial government passes this bill, then life that exists on the Niagara Escarpment would die, the people and animals would become ill and all the plants would be killed, even the hardy cedars that have graced the cliffs of our Niagara Escarpment for over a thousand years. All would be gone. All that would be left of a once beautiful international biosphere reserve will be freak mutations of the original species.

This will also have major economical damage. What generation will pay for the care of the ill and the environmental cleanup, if any can be done, and who is going to pay for the relocation of many millions of people? Because of the environmental damage, the economy of the province will be severely affected, and instead of continuing to be Canada's heartland, it would become indeed Canada's wasteland.

Now I'm going to give you an alternative, an alternative that is wanted by many of my generation and most certainly all generations in the future. This alternative would have farm land, forest and rock faces stay as they are: farm land, forest and rock faces. We would have quarries, pit mines, pits and depressions in the ground stay as they are or rehabilitated into wildlife reservations, pollution-free parks, reservoirs to hold drinkable water for municipalities, lakes for fishing and swimming and skating ponds for winter recreation. The list goes on and on.

All of these alternatives would reduce unemployment and boost the tourism industry for future generations and for today. This is what the future wants: a safe, natural environment to grow, to live and to enjoy.

There's no such thing as a safe wastefill site, but there are much safer places to put a wastefill site, places that would not ruin a biosphere reserve, all the life in it and all the millions of human lives around it. For the same cost as a new, modern wastefill site, we could have some of the most economical, safe and up-to-date recycling plants. All materials must be made so that they can be recycled.

To put a wastefill site on top of the Niagara Escarpment, with all the alternatives we have, is like putting a leaking nuclear reactor on an old barge in the middle of Lake Ontario. They both would have the same disastrous results in the end: a deadly ecological demise of all life forms.

You are the legislators of today, but I may be one of the legislators of tomorrow. If you make the wrong decision in the near future and permit wastefill sites on the Niagara Escarpment, the technology and legislators of tomorrow may not be able to correct your disastrous mistakes. This is why the Niagara Escarpment must be protected for all time.

The only group I am here to represent is the future and the youth of the world, and I trust this committee will recommend that this bill be approved for third and final reading in the upcoming sitting of the Legislature, because this is our future at stake. Thank you. Merci pour votre attention.

Mr Murphy: Thank you very much for your presentations, both very well done. Like Mr Chiarelli, I am not from Mr Duignan's area—I represent a riding in downtown Toronto—so I have to be somewhat educated on what is happening, and your presentation certainly helps.

I was just thinking about your example of your house and having been there for a long time. I know the commission has some power over what you can or can't do with your house. I'm not sure how far it goes, but I have heard some stories. If you were given approval, for example, for an extension to your house or building a new house on the escarpment and at some point halfway through the process it was decided, "We'd better not allow any more extensions, any more building," if you're halfway through the process and the law is changed so that from now on we don't allow any more building, the question I have, from a responsible legislator's point of view, is should you be allowed to continue your extension or should it apply as of that point on and you should be compensated for tearing down your extension and paid for the costs you've put out? How would you deal with the issue of you being halfway through your building?

Mr Kirkwood: My thinking is that they should be able to come to a decision before I start it, not try and stop us halfway through.

Mr Murphy: Absolutely, that would be the ideal. But if somebody is halfway through the process when you decide, as responsible legislators, what should you do with the person in that position?

Mr Kirkwood: If that building was encroaching on the rights of others or something of that nature, I might not like it, but I could understand why they did it.

Mr Duignan: I wish to thank Harvey and Janice for coming along this afternoon. It's not very often that we get the younger generation's point of view on any legislation, and legislation we enact or don't enact has an impact on the future generations down the road. Your point of view has been well worth it. And no doubt we will see you in this place some time in the near future. Please keep up the good work, and thank you for coming.

The Chair: Mr Kirkwood and Ms Brooks, I speak for all the members when I say we appreciate your presentation, your interest and your activism. Merci beaucoup, Janice, pour avoir fait cette présentation.

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DOUGLAS LARSON

Dr Douglas Larson: Thank you for having me. It's a pleasure to be here, if only because I see most of you on TV and it's nice to see some flesh and bones for the faces I see so regularly on the news.

I've handed out a two-page summary I will read for the record. It's very brief, and I will make myself available for questions when I'm done.

These comments are made regarding private member's Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment. My comments are based entirely on my experience as a scientist working in and on the Niagara Escarpment since 1985. I have coordinated the research activity of about 45 people since that time, and our group has been responsible for publish-

ing numerous scientific papers and book chapters dealing with the ecology of the Niagara Escarpment. Over a hundred national and international magazine, newspaper, radio and television items have been produced about our work.

I am not a member of, nor have I ever been a member of, any political action group or organization of any type, although I have given public lectures to nearly 60 groups over the past four years. I have believed that membership in such societies could be interpreted as evidence of partiality.

My comments will be very brief. Cliffs of the Niagara Escarpment support the most intact and the most ancient forest ecosystem in eastern North America. All parts of the escarpment from Grimsby to Tobermory show more or less the same pre-settlement forest structure: old slow-growing trees, abundant dead trees, lichens, mosses, ferns and a wide assortment of other wildlife that appear to be distinctive; that is, the structure of the ecosystem is not like the rest of Ontario.

The cliff ecosystem has not been exposed to fire, logging or other human disturbances. Its structure has been relatively constant over the past 4,000 years, and recent data suggest that its form has not changed much in 8,000 years. The oldest individuals of eastern white cedar were nearly 1,600 years old when they died, and many of the ancestors of the current tree population have been lying at the bottom of the cliff without decomposing for 3,500 years.

The cliff ecosystem supports the slowest-growing trees in the world. An entire microcosm of more than 30 species of algae live within the solid limestone walls of the escarpment. These are very unusual properties for a forest ecosystem in North America, or in the world, for that matter.

I have been asked to give formal presentations of our research results to universities all across North America. Without exception, my hosts are amazed that such a slow-growing and structurally intact forest ecosystem would be present in the midst of heavily industrialized North America. The economic value of studying such a forest, especially from the point of view of using it to learn about long-term climate change, is enormous.

At the current time, the cliff ecosystem of the Niagara Escarpment is buffered from the outside world by the lands included in the Niagara Escarpment plan area. These lands contain richly wooded second-growth forests, as well as farms, factories, houses and schools. At present, the encroachment on the cliff ecosystem is impeded somewhat by the Niagara Escarpment plan, which effectively discourages consumptive exploitation of escarpment lands.

The proposed legislation would seek to add one more piece of legislation restricting human behaviour within the plan area by discouraging the creation of waste disposal sites within the plan area. This legislation boldly announces to the public of Ontario that further encroachments on lands adjacent to the Niagara Escarpment must be curtailed.

From the point of view of the long-term value to

science and society, I claim that we must allow no further loss of this habitat. The legislation should be passed, because it demonstrates to all Ontarians and to the world at large that an enlightened, affluent people can achieve sustainable environments by curtailing their exploitation of them. If we can't do it here, we can't do it anywhere. Thank you.

Mr Murdoch: There will be lots of questions on this, but I'll bring up the problem I have. You mentioned the lands in the natural area, and they're not the same as what's in there. I'm not going to argue with the point about the slow-growing trees in the natural area and the rock face and the swamps that are part of the natural area. But then we have the protection out to the rural area, and in my area in Grey and Bruce it goes out sometimes three and four miles.

Dr Larson: You're speaking about the plan area.

Mr Murdoch: Yes. But this bill unfortunately takes in that plan area, and that's where I have some problems with it. The more we go into it, it seems to be a bill just for the Halton area, but when the bill was introduced, it took in the whole Niagara Escarpment plan area. In our area we do have a lot of area that's out of the natural area. I'm sure you know what I mean by "natural," "protected" and "rural." I have some concerns with that. Would you not say that some of the rural area could be used as a landfill site? I'm talking about our area.

Dr Larson: Whether or not such lands should be used for a landfill site is really outside of my expertise. I would point out that the problem you've indicated is in the boundary of the Niagara Escarpment plan area as it was originally designated.

The people who drafted the borders of the Niagara Escarpment plan area did not have the advantage of knowing what we know now about the structure of the cliff face ecosystem on the escarpment. In fact, to be honest, as a professional ecologist, if it had turned out that the cliffs supported a second- or a third-growth forest ecosystem, in other words, one that was heavily disturbed, most of my comments would not apply, because it would have been a system already heavily disturbed by human activity.

Really, what you're suggesting is that a reconsideration of the boundary of the Niagara Escarpment plan area might be appropriate. I would agree with you that it might be appropriate to do that, but it's almost a secondary issue. I've been asked to respond to a piece of legislation that has been proposed now, and given that that's what I've been asked to judge, my comment is that we are better off as a society with that bill passed than without it passed.

Mr Murdoch: I can understand what you're saying, but you've got to respect the rights of some of the people who are in the area that now, if this bill is passed, will be included. The county of Grey is going through its waste study and it's going to have to come up at some time with a site. I'm not saying they have a site anywhere near the escarpment now—that process hasn't come there—but it could happen.

Dr Larson: As an ecologist, if I were to design the

Niagara Escarpment plan area based on what we now know about it as an ecosystem, a functioning, intact, ancient ecosystem, I would draw it differently, and anything I can do to help in the redrafting of borders to the Niagara Escarpment plan I would be more than happy to help with. But that's almost a secondary issue.

Mr Murdoch: Well, it is and it isn't, for me. Someone earlier said we only have 14% of the land in Grey, but we have 158,000 acres of it compared to Halton, which only has 55,000. So we do have a lot of land in our area.

Dr Larson: The point my brief tries to make is that we sitting in this committee room have almost no idea how amazing the rest of the world finds this place. You have to travel and visit scientific and land management groups in other countries, especially in the UK and the US right now, to appreciate how amazed they are to find this kind of ecosystem in the middle of seven million people. In fact, the occurrence of it is really the basis for the Ministry of Environment's support of our climate change research right now.

If this cliff ecosystem had been in the middle of Ellesmere Island, I suspect the Ministry of Environment or the federal Department of the Environment would have had much less interest in support for the research on climate change, because there are so few people living in the immediate vicinity. We are going to be able to tell Ontarians and actually North Americans about the extent of recent climate change because of the fact that this ancient forest is there. My job for the future, to follow up on the last speaker, is to ensure that subsequent generations of people will also be able to learn from it, in ways we haven't even thought about yet. The more we encroach on it in any form, whether we're talking about landfill sites or whether we're talking about heavy industry, the less opportunity there will be in the future to learn from this habitat.

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Ms Margaret H. Harrington (Niagara Falls): You said from Grimsby to Tobermory it shows the same pre-settlement forest structure. Is there something different between Grimsby and the Niagara River?

Dr Larson: Dynamite. Long sections of the cliff face, around Hamilton and from Grimsby to the falls, were blown up by well-meaning people from the 1880s to the 1940s. It was believed that the jagged, rugged-looking cliffs with the twisted trees represented a real estate hazard: Some people have property at the base of the cliff and they would look up through their picture windows and see a 45-ton boulder positioned in such a way as to make them uncomfortable while eating dinner. As a consequence, there was a program that officially blew it up to make a nice straight edge, and all of those places have been lost.

They are slowly recruiting the same kind of flora and fauna that we have on the natural Niagara Escarpment. By the way, this recruitment of the natural flora seems to also be occurring on all of the quarry sites that we're currently researching. We have a very active research program right now funded by the Ministry of Natural Resources, looking at the controls of natural

recolonization on cliffs and quarries. It looks like, as in the scaled cliffs around Hamilton and around Niagara Falls, there is a very slow but inevitable return to a natural Niagara Escarpment flora, given the slow passage of time. However, even around Niagara Falls, I have found a few places that the blasters didn't get to, and there is the same pre-settlement forest structure in very small pieces of the cliff edge.

Ms Harrington: When was that done? In this century?

Dr Larson: Yes. Some of the blasting was done recently. As far as I'm aware, the ski area on the Milton outlier was partially created by blasting away at the cliff edge to create a nice slope down from the top. I don't want to vilify the people who did that. They didn't know what they were doing, and there's some defence offered them by that.

Ms Harrington: Along there, we have the St Catharines city landfill, Walker Bros Quarries, right in line with it, followed by the Niagara Falls city dump. They're all lined up there right along the escarpment face.

We really wish we had a magic wand to make garbage disappear. Barring that, garbage disposal is a fact of life. We now I think are agreeing that the Niagara Escarpment is not the place to put it. I'm sure there are other precious places across Ontario which are not appropriate places for landfills. I don't know whether we'll need legislation to protect them, or how they would be identified and laid out and mapped scientifically. Do you feel there are appropriate areas for landfill across this province, or what's the solution?

Dr Larson: Again, I'm not an expert on this. If my private opinion is of any value I'd be glad to give it to the committee, but I don't think you should place any weight upon it at all.

Ms Harrington: What is your opinion?

Dr Larson: There are ample opportunities for multiple smaller-scale landfills that, if properly configured, actually can be turned into recreational areas. I've seen this done in Michigan successfully. The city of Guelph is very interested in getting its own wet-dry facility going, again sitting on top of limestone outcrops at the side of the Speed River, right near one of my research sites.

We as a society have to recognize that we make it, we deal with it. I agree with Ruth Grier's admonition for us to deal with it as locally as possible. Having said that, there are some better situations and some worse situations. I'm not sure there's enough evidence yet to show the catastrophes that many environmentalists predict. At the same time, if any of them are right, it seems to me that the cost of making remedial solutions to that in the future might be enormous. It's certainly something we should do very carefully. The answer might be a larger number of small units rather than a small number of large units.

Mr Duignan: Just to satisfy my own curiosity, were you the individual who recently discovered the thousand-year-old trees on the escarpment?

Dr Larson: It seems recent to me, but it was in 1988.

Yes. We first came across old trees on the Milton outlier and then proceeded in 1989 to show that the entire escarpment is involved in this same kind of recurring pattern of old trees along the escarpment.

Mr Chiarelli: I appreciated your presentation. You indicated, "The encroachment on the cliff ecosystem is impeded somewhat by the Niagara Escarpment plan, which effectively discourages consumptive exploitation of escarpment lands." You go on to say that this particular bill is "one more piece of legislation restricting human behaviour within the plan area by discouraging the creation of waste disposal sites within the plan area." To me, it seems you're looking at long-term preservation.

I guess you've partially answered my question. A number of people have come forward and talked about environmental disaster. In the context of your presentation and in the context of environmental disaster, does one more site—not a number of sites and not a policy of approving sites in the future, but the RSI site—translate into environmental disaster down the road?

Dr Larson: No.

Mr Chiarelli: In other words, if that site were to be grandfathered or permitted because of certain legal reasons or whatever and then from this point on no further sites were permitted, does this one site impact on what you're saying significantly or is it very incremental?

Dr Larson: It's incremental. My answer was no, and it's incremental.

This habitat is about 700 kilometres long in Ontario. By the way, there's another 500 kilometres of it in Wisconsin and in Michigan, so we don't own all of the Niagara Escarpment; we only have about two thirds of it. It's a circular-shaped basin.

Having said that, the encroachment has been gradual. The rock scaling that happened in Niagara Falls eliminated that portion of it; the scaling around Hamilton took away that portion of it. Every time a road cut is proposed through the escarpment, there's a bit more that goes. Certainly, whatever is proposed for one particular site will not, in my view as a professional ecologist, result in a large-scale catastrophe. It will be an incremental loss, but a loss to us all. What happens is that the habitat right now is a long river of rock that is linked together by this series of lowlands covered with glacial till. Every time we lose one of these links in the chain or every time one of these links in the chain is allowed to corrode somewhat—that's probably a better analogy—we lose an increment of control over our future.

No, I'm not one of those who argues in favour of the catastrophe hypothesis. I don't see any evidence in the literature that such catastrophes would happen. Now, if one happened to own property near that site, that might appear to them to be catastrophic, but as a professional scientist I'm interested in the way the place works, and on the basis of the evidence I know, any loss to the place by allowing one more site to be licensed would be an incremental loss, a small-scale catastrophe perhaps, but spread over the entire escarpment it would simply be one more kick at an already wounded dog.

Mr Offer: I have a question dealing with not just

landfill sites or waste disposal sites or waste management sites, but anything that goes on in the Niagara Escarpment. You know there are certain permitted uses, a certain ability to deal with the escarpment. I'm moved by what you have said about anything that goes on in the escarpment being an assault against the escarpment itself. Would you be in support of just freezing the escarpment as is, save any remediation?

Dr Larson: No. I'm in favour of having sacrificial lamb components of the escarpment, and the site that comes to mind the most quickly is Rattlesnake Point. The amount of devastation to Rattlesnake Point by pairs of feet, like we've all got, has been enormous, and by the rock-climbing community. The rock-climbing and hiking community wants to expand access via more access provided by the Bruce Trail all along the escarpment. I am against that as much as possible, and I've written articles for the climbing association admonishing them against trying to get more climbing routes. What we really need is to have some areas of it, the best-representative areas of it, put aside as solidly as possible so they can be used passively and non-aggressively, and then visit to hell, if I can speak that way, the other places which have already been taken to such an extreme degree of destruction that it's almost too late for them.

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If you've ever gone for any hikes around the edge of Rattlesnake Point, there are nothing but adult trees left. In fact, when those adult trees die there will be a desert unless there's an active replanting campaign. As long as it's already been so devastated, we might as well continue to have very heavy use there.

Mr Offer: Wouldn't the quarry fall within your definition of sacrificial lamb?

Dr Larson: "The" quarry or quarries?

Mr Offer: Quarry.

Dr Larson: I'm not talking about "quarry"; I'm talking about quarries. All my comments were addressing the bill, and the bill proposes that a ban or some kind of restrictive legislation be placed upon the creation—

Mr Offer: Any existing quarry. Would that not fall within your—you're an expert at this thing. You gave some very interesting information.

Dr Larson: So what's your question?

Mr Offer: I asked the question about any sort of development of the escarpment and you said that there are areas on the escarpment that have been walked upon, trod upon—

Dr Larson: And otherwise.

Mr Offer: —to such a degree that in your expert opinion they have been fairly badly hurt. If I hear you correctly, you're saying that those areas, let them continue to be walked and trod upon and let everyone visit that, but let's keep the rest of it as pure as possible.

Dr Larson: Yes, as pure as we can afford to keep it.

Mr Offer: The obvious question I would ask is, based on your expert opinion, isn't the existing quarry part of that walked-upon, trod-upon area, sacrificial—

Dr Larson: You're switching scales on me. I'm sorry

to interrupt, but what do you mean by "the existing quarry"?

Mr Offer: Any existing quarry.

Dr Larson: Okay. Then could you rephrase your question? I thought you were speaking about one specific quarry when you said it.

Mr Offer: Any existing quarry that lies within the Niagara Escarpment. I'm not the expert you are, so I can't—

Dr Larson: I'm just trying to find out what your question is.

Mr Offer: My question is that there are certain quarries on the Niagara Escarpment now.

Dr Larson: Many—2,000.

Mr Offer: And I would have thought they would fall within your definition of having been ruinous to the escarpment.

Dr Larson: Yes.

Mr Offer: And then you have said that you should leave certain things as sacrificial lambs, that as long as nothing further takes place, we are doing something in a positive fashion. So the question I was attempting to pose to you, and I apologize for the imprecision—

Dr Larson: No, don't apologize. We're just trying to understand one another.

Mr Offer: —was whether the quarries that now exist on the Niagara Escarpment are, in your expert opinion, within the definition of the phrase "sacrificial lambs."

Dr Larson: That's a hard one to say yes to, because I'm still not sure what you're getting at. Let me try to rephrase it.

Mr Offer: Okay, you ask the question.

Dr Larson: Are you suggesting that continued quarrying be done in existing quarries?

Mr Murphy: What do you do with the quarry?

Dr Larson: Well, that's a separate one. We'll just deal with his first, if you don't mind.

Mr Murphy: Aren't we asking the same question? I think we are.

The Chair: Answer that question and then perhaps get to the other question.

Dr Larson: If there are existing quarries and there is a proposal to start up a new quarry, it's better to continue to exploit the existing quarry because it has already been quarried, and to that extent it's better to expand it than it is to dig a new hole in the ground and make a new quarry.

If your question had to do with switching the use from quarry to landfill, that's another issue.

The Chair: What is your response to that?

Dr Larson: Again, I'm not an expert on landfills. If I could be assured of the absolute, ironclad lack of leakage from such a quarry, perhaps I wouldn't be too upset. But as far as I know, limestone bedrocks are extremely porous, and therefore my primary concern has to do with the engineering of such sites to ensure that they cannot leak.

Mr Offer: There is a follow-up question to this.

The Chair: We actually allowed 10 minutes for your question. I was very generous because we were all interested in that.

Mr Stockwell: He took five minutes to get the questions clear.

Dr Larson: That's right. I'm a demented university professor and can't ever get my questions straight.

Mr Offer: We've heard some wonderful presentations, and this is just a continuation of these presentations. In terms of the ironclad guarantee against leakage, would you be at all reluctant to leave this to an environmental assessment hearing?

Dr Larson: I have to claim ignorance again. I don't know enough about the environmental assessment process to know how much faith I should have in the hearing component of that process.

The Chair: Thank you, Dr Larson. We found it very interesting and very insightful.

Dr Larson: Thank you for having me.

CITY OF ST CATHARINES

The Chair: The city of St Catharines, Mr Denis Squires and colleagues. Mr Squires, perhaps you can introduce the others.

Mr Denis Squires: Thank you, Mr Chairman. I appear with two engineers: city engineer Paul Mustard, and Dave Smith, our environmental engineer. I'm going to make a presentation and they will be available to answer questions with me, particularly as you may have some pertaining to the Glenridge quarry operation, about which you will be hearing, in St Catharines.

I have filed with the Chair a copy of minutes from February 7 and a confirmation bylaw which in effect authorizes me to be here and speak on behalf of the city of St Catharines. The material I've left with you is less formidable than it appears and I expect to make my way through it fairly quickly.

The city of St Catharines submits that Bill 62 should not be enacted in its present form. As it's drafted, it makes certificates of approval unavailable even for uses which the Niagara Escarpment plan permits. This will result in a statutory scheme, when you take the legislation all together, under which certain waste disposal operations would be permitted or could be established in the plan area but for which no certificate of approval could be had. This is a rather odd result, and it is because the legislation does not conform to the Niagara Escarpment plan, strictly speaking. This in turn has serious consequences for waste disposal in St Catharines. As a result, I've been asked to attend and make this presentation before you.

The bill changes the law to make the operation of the city's existing, permitted waste disposal site illegal if a new certificate of approval should become necessary in the course of its operation.

A little background on the Glenridge site: The city of St Catharines disposes of household waste at that site. It commenced operation in 1976, which predates approval of the Niagara Escarpment plan in 1985. It's a municipal

facility. It's operated by the city of St Catharines. It's located in a plan area and is therefore an existing use. It's also a permitted use because it's in the urban area designation of the plan. An urban area is not green space; it's developed. It certainly is in our area, at least.

Proposed waste disposal operations in the urban area do not require an amendment to the Niagara Escarpment plan. The range of permitted uses there is subject to the development criteria and objectives as incorporated in local planning documents, official plans and bylaws that are not in conflict with the plan. In the urban area, changes to permitted uses and expansions, alterations, are all permitted. They don't require a plan amendment provided it meets the regulatory regime imposed by the plan itself. But you can do these things there without a plan amendment, and that, I will be submitting to you, is a critical distinction.

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I'll just refer to these; I don't propose to go through these exhaustively. I have the urban area criteria set forth at tab A. On the second page, page 19, is the provision which pertains to changes to permitting uses, expansions and alterations. Likewise, over the page are the provisions applicable to existing uses which can be expanded pursuant to the requirements of the plan itself.

Over on the last page at that tab, I note there are some uses from amendment 52, which are waste disposal types of uses, that the commission likes. They accepted these from the operation of amendment 52, and I'll come back to that in a moment. But for purposes of existing uses, they can expand.

Turning to amendment 52, it had the effect of deleting waste disposal operations from the definition of "utilities," and utilities were permitted in four areas of the plan. They are no longer permitted in those four areas. The urban area is not one of those four areas. New waste disposal operations or expansions to existing facilities are permitted in the urban area designation under the criteria of the plan.

When amendment 52 was brought forward, the commission basically said, "If you want to have a landfill operation in the plan area, you've got to get a plan amendment, because these are very intrusive and they have environmental consequences." However, they accepted certain of these, ones they liked, the ones I call the warm and fuzzy ones, the friendly ones: Small-scale recycling and composting are accepted in amendment 52. That was at the last page I showed you at tab A. Certificates of approval under this bill will not be available for those.

I'm submitting to you that the bill, as it's drawn, is inconsistent with the plan and inconsistent with amendment 52, because it represents a total, outright, blanket prohibition.

I want to turn to the public interest, because the public interest was specifically addressed when the plan was established. The act established a process to ensure that escarpment lands within the plan area would be protected, and from the legislation ultimately emerged the plan which serves as a framework of objectives and policies to

strike a balance between development, preservation and enjoyment of this resource. This language is found at the introduction to the plan itself, and I've attached a copy at tab C.

At tab D I've included a copy of the minister's letter, only to make the point that reconciling of divergent views was necessary to safeguard natural features for future generations when the plan was developed.

I'm submitting to you that the approval of the plan by cabinet in the first instance represented a determination that waste collection, disposal and management uses were compatible with the purpose and objectives of the act.

We have large-scale public uses permitted: sanitary sewage, gas and oil pipelines, electrical lines and towers, telephone lines, public transportation systems and broadcasting facilities. Not because these enhance the natural environment of the escarpment, but because they're justified out of public necessity, out of public need, they were permitted.

Niagara region is actually somewhat unique in the waste disposal field. The area municipalities have waste disposal responsibility, but in St Catharines it's us; we're responsible at the city level. Glenridge quarry is used for household waste, Walker Bros for industrial, commercial and institutional, ICI. Both of these facilities are in the plan area, so we're interested in Bill 62 on that account. The bill represents a substantial impact on our ability to fulfil our waste disposal responsibility.

I want to distinguish us from the private sector. Private operators can reallocate their resources for other purposes in response to adverse legislative change. We, no matter what, will be responsible for waste disposal. We can't go away. In discharging our responsibilities, we're dependent on private sector operators. We are at the beginning of the site selection process for a new landfill site. It's proposed that the Niagara Escarpment plan area will be excluded from lands available for candidate sites. We're not looking in the plan area. The exclusionary criteria have been identified, and I threw in a copy at tab E just for your reference.

We are participating in a club approach to waste management and we have developed a regional municipality of Niagara waste management master plan. The objective of that plan ultimately is to reduce from 13 existing waste disposal sites within the region to three centrally located sites.

Turning again to Glenridge quarry's operation, because it, we feel, will be impacted by the bill, a question arose over interpretation of conditions for filling new cells at the Glenridge site. As a result, city staff developed a proposal to provide interim disposal capacity until a new longer-term site can be established. This involves an exchange of approved but unused disposal capacity from the unused new cells to existing cells. We will be operating within our capacity limit, but instead of putting it here, we're going to put it there. We're going to use the old cells rather than new cells with a grade level change, if that proposal succeeds on its technical merits.

This proposal will allow us to continue to use the site for some six years. It does not require an amendment of

the Niagara Escarpment plan; it does not require an environmental assessment. The city has published particulars of the proposal, and I've included them at tab F for your reference. I'm hoping you'll find that material fairly comprehensive.

The existing cells at Glenridge will be fully utilized this year, probably by November. If the site is required to be closed then, when we reach current approved final contours for existing cells, we have to send our waste somewhere else. The cost of doing so will amount to some \$5 million annually in addition to current costs. This translates into some \$32 million over the next six years of unused capacity. Some of the citizen organizations have questioned the numbers and they may suggest to you a lesser figure, but let me say that no matter how one cuts it, it's a substantial economic impact to St Catharines.

The expenditure, if it's \$5 million annually, will result in about an 11.5% tax increase for all property owners in St Catharines: residential, industrial and commercial. The industrial and commercial taxpayers will derive no benefit because Glenridge deals only in household waste. A report to council reciting these figures is attached at tab G.

The grade modification proposal was approved by city council in September 1993—the minutes are at tab H—but if the passage of the bill should make a certificate of approval unavailable, the site will become unusable after the capacity of current cells has been met. This means that the total allowable capacity of the site will go unused, and we submit that is a waste. Apart from its economic consequence to us, we will have a landfill site, which could accommodate more waste, which goes unused. That result would ensue only because Bill 62 is passed in the form of the blanket prohibition in which it now is.

The plan was developed having regard to the reconciling of divergent interests, and we do submit that a balance has to be struck. The balance originally struck by the plan was altered by amendment 52, but neither the plan nor amendment 52 has affected Glenridge to require a plan amendment for alterations to the site, where existing and where permitted. I wish to emphasize that.

During the amendment 52 hearing Halton region appeared—and I understand it's before you to address Bill 62—as a party for the purpose of supporting the amendment. Halton submitted that landfilling should not be permitted in the plan area. At the same time, they were depositing a substantial portion of their waste in the Niagara Escarpment plan area at the Walker Bros quarry, using capacity which would otherwise presumably have been available to us, and they incinerated the balance in New York state, because they can't incinerate in Halton, as their current facility was not then operational.

I'm not criticizing Halton as such. The point I wish to make, though, the lesson that has to be drawn from this, is that the complexities of the issues are such that Halton supported an amendment to the plan which was inconsistent with its waste disposal practices. I submit that didn't represent a proper balance between the responsibilities it exercises as a public authority.

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The objectives of Bill 62 have to be addressed. The bill seeks to avoid the hearing process involved in a plan amendment or an EA. I have emphasized to you that our grade modification proposal and other alterations to the site require neither. Affecting Glenridge by Bill 62 will not advance the objectives of the bill in that respect.

With respect to new sites, as recorded in Hansard, the proponent of the bill has referred to the escarpment as a natural environment and biosphere reserve, which indeed it is, and the member expressed concern about the application of RSI in Halton Hills to use the Acton quarry as a private landfill site. It's not necessary to prohibit certificates of approval for existing and permitted uses to achieve the objective expressed with respect to that site.

Finally, there are only some existing operating landfills in the plan area. I don't believe any have been approved since the plan itself was approved. Every one of these ultimately will be closed. Is it really necessary to impose this level of regulation, which we submit will have a dramatic effect on St Catharines, for so limited an objective?

Existing operations should not be subjected to a consideration of whether such a use should be permitted in the plan area, as that determination's already been made; they are already there. Given that their presence has been established, and given the expense and other commitments that have been made with respect to them, they should be allowed to fulfil their function on the grounds of public necessity, by which they were initially permitted. It does not serve the public interest that certificates of approval should be absolutely prohibited for these sites.

In conclusion, Bill 62, as drawn, will establish an anomalous statutory regime for waste disposal operations in the plan area. The reach of the bill exceeds its objectives. It will have a substantial, if not catastrophic, effect on the economic interest of St Catharines for little, if any, we submit, environmental benefit in so far as Glenridge is concerned.

Bill 62 denies certificates of approval for uses permitted by the plan. In that respect, it's inconsistent with the plan, the statutory regime under which permitted use is required. That a new certificate of approval cannot be made operational is, we submit, unsupportable. The regime then is not required to achieve the legislation's objectives.

Because the bill has the potential to prevent operations at the Glenridge site and result in our early closing, we appear before you. We're also concerned that even remediation requiring a certificate of approval could not be undertaken for the Glenridge site, or for any other site we have that's closed, let us say, in the plan area.

It's submitted that the bill shouldn't be enacted in its present form, but if it must be enacted, certificates of approval should be available for existing or permitted uses in the Niagara Escarpment plan area. I would invite you to turn to tab K, because I've taken the liberty of drafting an amendment. This represents an alteration to

the proponent's bill by creating subsection (a), which is from the bill, and subsection (b), which is new.

Subsection (b) has the effect of allowing certificates of approval in respect of a waste management system or a waste disposal site which is an existing or a permitted use as provided in the plan and which does not require an amendment to the plan. It's submitted that this amendment would enable the objectives of the bill to be met, while at the same time being consistent with the Niagara Escarpment plan. It would also spare, as a result, the Glenridge quarry landfill site from substantial adverse impact.

Finally, I wish to leave you with this question: If a use is permitted in the Niagara Escarpment plan, why on earth wouldn't certificates of approval be available for them? That completes my presentation.

Mr Duignan: Thank you for bringing forward your concerns from the city of St Catharines. My approach to this whole bill over the period since I introduced it and before that is that it's a very non-partisan issue. You have brought a legitimate concern here to this committee, and hopefully, that non-partisan position will continue to the point that we can get this bill approved as amended. Have you had an opportunity to review the proposed amendment to the bill?

Mr Squires: I have prepared a comment with respect to it, but I don't know what its status is or whether it was before you. I can leave you with a copy of this, if you like. The difficulty I have is that I haven't subjected it to any rigorous analysis, because I only saw it for the first time yesterday, but I did dictate some thoughts on it and I'm prepared to leave them with you, if that's of any benefit. I do have some comments on them and I'd be happy to make them now.

Mr Duignan: I would appreciate the comments you have on the amendment, because it would help us in our deliberation in clause-by-clause.

Mr Squires: In many respects, it meets the same objections that we have to Bill 62 in the sense that it still doesn't square with the plan. There are still instances of permitted uses which would not get a C of A. We still have that problem with it.

We have concerns about the inadequacy of the opportunity to develop a more intelligent response. We don't think you should pick and choose between uses permitted by the plan to determine which are capable of a certificate of approval. If it's approved by the plan, we submit it's appropriate that a C of A be available, period.

I believe the amendment to Bill 62 selected from some of the amendment 52 uses. It didn't describe them in the same language either, so I had a concern that maybe the plan and the bill mean different things in some respects. That result, to me at least, seems to be unnecessary. It's possible to make them square, so why not do so?

I don't think existing sites should be required to demonstrate that a certificate will result in an environmental benefit, and that's one of the criteria. Would you prohibit an environmentally neutral proposal which is being advanced for a more economic or efficient operation of a site? We have a concern that by requiring there

be some environmental benefit, it's unduly restrictive.

And it's again the comment I made with respect to existing sites. There's a limited number of them, and by affecting what they can do, given that they're going to be closed anyway, you're having a great impact with potentially little environmental benefit, given that the sites are already located there. If it were a case of a new site, I would be prepared to yield, but when you have them already there and operating, if you affect them so they can't fulfil their function, can't be fully utilized, you result in an inefficiency which requires landfilling elsewhere unnecessarily.

1600

Mr Chiarelli: You spent a fair amount of time at the beginning talking about the fact that Bill 62 would override the Niagara Escarpment plan. You haven't had the benefit of hearing the dialogue and the discussion before now, but I interpret the intention of the member whose bill this is and the government members to do just that. They intend this bill to override the Niagara Escarpment plan. They intend it to be a total ban. That's the sense I'm getting from this particular committee.

It's also been made very clear that the Ministry of Environment is very reluctant to go on the public record in support of this legislation. I suspect the reason is that Bill 62 compromises the integrity of the planning process, as you have pointed out in your submission, and, as some other members of this committee have pointed out, it probably compromises the integrity of the legal process in some respects, in the case of the one applicant who's been mentioned very frequently in these hearings.

I think those are givens at the present time. That appears to be the way the legislation is going. There's a lot of public support and there's support from the members on the government side that Bill 62 should be that draconian and should override the integrity of the planning process.

I don't know what advice I can give you other than to ask, as a lawyer who's practised presumably for a number of years, what's your assessment of legislation that does that and which I would assume the government's own Ministry of Environment refuses to align itself with? What's your assessment of that type of legislation as a lawyer talking about process?

Mr Squires: That kind of legislation, a complete, outright, blanket ban, has the deficiencies which I suggested in so far as it doesn't recognize uses which the Niagara Escarpment Commission likes, that it supports, and that's the body that administers the plan area. I think regard should be had to the plan in drafting provincial legislation.

The legislation is not regulatory; it's an outright prohibition. That has certain impacts. If the government of the day determines that this draconian legislation is appropriate, that that's what it wants, it will proceed to cost the city of St Catharines the cost of diverting waste at \$5 million, or whatever it may be, annually and will result in the closing of a not-fully-utilized site as a conscious act. The government will do that with its eyes open, if only because we came here today. All I can do

is make this presentation.

Mr Stockwell: You've read the draft; you just haven't had a lot of time to digest it. What did you think of the last section, subsection (2)?

Mr Squires: It's not in my draft. I think it's inappropriate. We can't do that sort of thing at the municipal level, and we have the same kinds of problems.

Mr Stockwell: We were told yesterday you could.

Mr Squires: Well, I would beg to differ. I stand to be corrected, however. For example, when we get an applicant for a building permit to establish a use we don't like and which happens to be lawful, we're not really in a position to pass zoning legislation to foreclose that person once the application is in. However, the province of Ontario is not in the same boat. I tend to be somewhat less sympathetic with the province. The province, because it wields that kind of authority, has a greater responsibility.

Mr Murdoch: I want to thank you for coming and bringing this problem to us, and I'm sure there may be others with this bill. But hopefully the government, before we're done here in the next couple of days, will take your situation into consideration. You've drafted an amendment at the back, and hopefully they can take that and put it into the amendment they had and switch it around so it will solve your problems. I just hope you stay around for the next few days and keep an eye on this so we can resolve your situation. I would hope they didn't intend to put you in this spot, but they have, and there may be other problems.

Mr Squires: We're not suggesting that it was done as a conscious act.

Mr Stockwell: No, purely unconscious.

The Vice-Chair (Ms Margaret H. Harrington): Thank you very much, Mr Squires, and the delegation from St Catharines.

ONTARIO WASTE MANAGEMENT ASSOCIATION

Ms Nancy Porteous-Koehle: I am Nancy Porteous-Koehle, the president of the Ontario Waste Management Association. With me today is John Sanderson, our vice-president, and Terry Taylor, the director of public affairs for the Ontario Waste Management Association.

We appreciate the opportunity of appearing before you today. We have some very serious reservations about this proposed legislation. During the next few minutes, I would like to outline our concerns to you. In the end, I hope to convince you that Bill 62 is unnecessary and unfair.

First and foremost, you must not forget that there is already a sophisticated process in place that thoroughly reviews all applications for new waste management facilities. I speak, of course, of the Environmental Assessment Act and the requirement to submit any application for a new landfill to the Environmental Assessment Board for a full review.

In our opinion, the board has never approved a landfill that it should not have. In making its decisions, the board fully takes into account all the issues raised by the citizens who make their homes in the proximity of the proposed site. The board and the OWMA are aware that

golf courses, ski hills and housing developments are more welcome uses of land than landfill siting. But the board and the OWMA are also aware that landfills are an inevitable societal requirement.

People will always need landfills. They are a necessary component of a solid waste management system. They have to be built somewhere, and the present government has decreed that they have to be built close to the residences of the people whose waste they receive. In our opinion, there are four major problems with Bill 62.

First, it subverts a fair and effective process, a process that can and does include the Planning Act, the Ontario Municipal Board, the Environmental Assessment Act and the Environmental Assessment Board. The present procedure guarantees that all applicants receive a fair hearing. All applicants may not be happy with the outcome of their hearing, but at least it can be said that those hearings are fair.

This bill would eliminate that system of fairness and equity. This bill would override those decisions that grant certificates of approval, even after it has been proven that the applications have merit. That simply is not fair. If the Environmental Assessment Board, in its wisdom, approves a new facility, why should the applicants be estopped by overriding legislation such as Bill 62? What further purpose does the Environmental Assessment Board serve if separate legislation is able to neutralize it and undermine it?

Either the people of Ontario have faith in the existing system, or they don't. If the system is found wanting, then fix the system. That's a better approach than applying a Band-Aid. In our opinion, the present approval system, although not perfect, works a lot better than if it were replaced by a patchwork of competing and contradictory legislation.

The second problem we have with Bill 62 is that it is patently discriminatory. The golf courses and the ski hills of the Niagara Escarpment are special, but so are similar facilities throughout the province. How can this government tell the folks who live in the region of Peel that their concerns are unfounded and unwarranted and that they're going to get a new landfill despite their protests? Try to convince the people in Durham region that the Oak Ridges moraine isn't as important as the escarpment. I think you would have a tough fight on your hands.

To carry this through to its illogical conclusion, why does Bill 62 mention only the escarpment? Why don't you amend it to include York, Peel and Durham regions, or for that matter the rest of Ontario? What possible justification is there for exempting one specific area of the province when everyone in Ontario is challenged by solid waste disposal?

Our third concern relates to the long-term implications of this bill. Eventually, every existing landfill on the escarpment will reach its absolute capacity, beyond which it will not be able to accommodate any further waste. This will happen regardless of all the waste diversion efforts and programs that are introduced. Eventually, the landfills on the escarpment will run out of room. Then what?

This bill cannot change the laws of physics. It cannot allow a completely full landfill to be enlarged. This bill also prevents new landfills from being established. So I ask you, if you can't enlarge the existing facilities and you can't build new ones, where is the waste going to go?

The answer is simple. Waste from the Niagara Escarpment will then be exported to other areas of the province, and that, my friends, is entirely contradictory to present government policy. What signal does this send to the people of Ontario? That the present government practises a policy of local final disposal—but not on the Niagara Escarpment, because the people who live there are special? Again I think that would be a tough sell.

Finally, there's a negative economic implication to this bill. The present wording would prohibit the establishment or enlargement of any waste management system and the commerce and industry that is dependent on it. Bill 7, a recent bill, defined a "waste management system" as comprising both services and facilities. This includes companies that haul waste, companies that recycle, companies that consolidate waste for final disposal, companies that compost organics, as well as all the attendant industries they support.

This bill would prevent the creation of a lot more than just new landfills. It would stifle any further development of the waste management industry on the escarpment, and that means no new jobs and no new investment in recycling, in composting or in waste hauling. I don't think that is the message this government wants to send out to the many thousands of unemployed who live on the escarpment.

1610

Ladies and gentlemen, Bill 62 is shortsighted, self-serving, unfair, illogical, discriminatory and regressive. It is simply a bad piece of legislation that should not be passed.

I look at the members of this committee and I see that many of you represent ridings in the greater Toronto area. Is there a more politically sensitive issue than the disposal of this region's waste? Would not every voter who lives within 60 miles of Queen's Park want their own version of Bill 62?

Before you cast your final vote, consider your own constituents. Many of you know that I too had the privilege of serving in elected office. I too stood on my constituents' front porches at re-election time and I have defended my record and answered their tough questions. I know what it's like to be accountable to the voters. Because I've been there, I can ask you, how will you be able to look them in the eye if you vote for this bill? How will you justify to your constituents that you addressed the concerns of the citizens of the escarpment and gave to them a better deal than you are willing to give to the people who sent you here?

That's the end of my presentation. I would be pleased to answer any questions, if there are any.

Mr Offer: We have had circulated an amendment to the bill that is being proposed by Mr Duignan. In fairness, it has not yet been moved, but it has been proposed.

First, are you aware of that amendment? If so, could you share your thoughts on the amendment in terms of your presentation?

Ms Porteous-Koehle: I just received a copy of it about seven minutes ago. I have not digested it fully, but when I look at what I do see, I just see that it's going to make a bad bill even worse. I look at the first one, clause (a), "A transfer station or recycling facility"—it does not apply to that—"which receives waste only from the local municipality in which it is located." Even that causes a problem. Under Bill 7 that was just recently passed, local municipalities can pass on the responsibilities to regions or to counties to handle waste disposal or any part of the waste stream, and this runs against that.

Mr Offer: So under Bill 7 there is the opportunity for the upper-tier municipality to take over the waste management of a particular area, and that bill was proposed by the government, and now if an upper-tier municipality does that it will run counter to the amendment.

Ms Porteous-Koehle: As I look at this—I haven't had a lawyer look at it, but that's how it appears to me from just that first one I've looked at.

Mr Terry Taylor: There's also an implication for the permit-by-rule facilities that Bill 7 contemplates. That's one section. The other section of the amendment, which is the new subsection (2), is particularly insidious. I understand that right now there are companies or applicants that have hearings before the board for landfills. It's entirely possible that the board in its wisdom might even grant a certificate of approval for that landfill, and they'd be all set to go except for this piece of legislation. There's a term they call expropriation without compensation. This bill would prohibit that applicant from suing the government for the loss of the many thousands and thousands of dollars it's invested in its landfill application. It's an insidious amendment to an insidious bill.

Mr Offer: There's been a lot of discussion around the amendment. As you know, the bill is really but one section and so many people have come to speak on the bill, and the amendment to the bill is in fact longer than the bill itself.

People are coming, and we're trying to get an understanding of not only how people view the bill and why, but also whether their opinions would change in light of the amendment that is possibly going to be moved. It's making a true investigation of the bill very difficult in many ways, when an amendment has more words to it than the bill itself and not many people have seen the amendment to be able to comment on it.

Earlier in the hearings there was some thought that the bill as found in Bill 62 would stop any remedial work that was required on any existing landfill site. I'm wondering if you've addressed your mind to that.

Mr Taylor: Our understanding of the bill is that it had relatively little impact, other than the enlargement issue, on landfills that already were in operation and had already received their certificates of approval. There's an enlargement issue, obviously, down the road, there's a closure issue down the road. Maybe we were mistaken, as perhaps you can be by just a simple bill, but we

thought it had relatively little impact on existing facilities, that its major impact was on future facilities.

Mr Murdoch: St Catharines was here before you, and it had some problems. They have an existing landfill site and, as I understand it, they want to put another lift on the existing one they have, but in order to do that they need another approval because they're going to take the garbage from another cell and put it there. They feel that this bill stops them from doing that.

I just want to thank you for your presentation. It's something we've been trying to say here and try to get across for days, that you can't just take one part of the province and say, "No more dumps there," or eventually everyone would want this.

In my area of Grey I have a problem, because we have more acres in the Niagara Escarpment than anybody, and we're doing a waste study right now, and if it comes up that it should be in one of the rural areas of the escarpment in my area, this bill would outlaw that. I personally would have no problem with something like this bill if it were just on the natural area. It runs against your presentation, because then do we not put it on grade 1 farm land or whatever? But I wouldn't have any problems supporting it for the natural area because we have, in our area, a lot of the natural area we wouldn't want to put a dump on. But there is a process in place already.

Ms Porteous-Koehle: And that's what we're trying to say, that the Environmental Assessment Act is there. If that act is wanting, let's look at that act and amend it.

Mr Murdoch: You'd almost have to say, by this bill being put forward by a government member, that maybe he has no faith in his government's process that it has established. Would you have to agree with that?

Ms Porteous-Koehle: Well, I can't—

Interjections.

Mr Murdoch: It's your riding. It's your people, Noel.

Interjection.

Mr Murdoch: Are you not in government? It's been three years now you've been there.

Mr Stockwell: Have there been any talks with the ministry people with respect to whether it supports this piece of legislation brought forward by the private member? None.

What about expropriation without compensation? I've asked a number of people about whether this is actionable. As you can see on their amendment, the last paragraph says, "No matter what we do to anybody, no matter how unfair we are and how unreasonable we are and how much money you've lost, you can't sue us." Is it actionable? Can they do this, in your opinion?

Mr Taylor: I'm not a lawyer, Mr Stockwell, but I think that's a pretty fair interpretation of the meaning of that phrase.

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Mr Duignan: Thank you for coming along and participating in this process of democracy. However, we stand at opposite sides of this particular issue. I've known Nancy for a number of years, and my staff has worked with the particular company you work for showing what

our particular stand is on the environment issues in this province.

When I stand on my doorsteps at election time and I talk to my people in my riding, I have to talk about justice to the people in my riding, who have been subjected for nearly 20 years now to applications in this particular quarry. The recent application by RSI has cost, for example, the city of Halton, some \$750,000. That's 3% of the municipal tax base. Where is the justice for the people in that area? I always thought, and I know the opposition harps on it, that landfill sites should only go into those areas which are acceptable to the municipality they're going into. This landfill site does not—

Mr Stockwell: What about Bill 43?

Mr Duignan: Bill 43 excludes the Halton region from landfill sites.

Mr Stockwell: Do any of those sites want those landfills? You're putting them there.

Mr Duignan: I talk about the justice for my community, for Halton region—

Mr Stockwell: Talk about justice for the people of Peel, Durham and York. It's injustice.

Mr Duignan: —and for other communities around the Halton area that depend on the water system from the Niagara Escarpment. When you site a landfill site in an area such as the Acton quarry—I mean, it's limestone. It leaks.

What do we do down the road if we do site a landfill in the Acton quarry and we have a leachate problem to the water system that supplies Acton and parts of Burlington and Brampton and Georgetown? Then we have to cart in water to those communities, such as happened in Cayuga last week. What would you say, standing at doorsteps at election time, to those people? What would you say?

Ms Porteous-Koehle: I too have had to answer that for the 12 years I was in office, because all over Peel there were landfills being proposed. Every year we had a new landfill site being proposed.

The Environmental Assessment Act is there. It's there to protect all parts of the environment. It's a very tough document for any company to get through. You really are jumping through hoops. Not only is there that document; there's the Ontario Municipal Board you have to go before, and all different, other agencies of the government hat you have to prove the worth of your project to and it has to be judged environmentally sound. That's the document we would like you to work across the whole province.

We're willing, as an industry, to work under the Environmental Assessment Act. If there are changes to be made to it, we recommend to you, respectfully, to make the changes that are necessary there to protect sensitive areas. And we believe the document does, but if it has to be reviewed, let's review it. Let's not throw legislation on top of legislation on top of legislation. The people in the Niagara Escarpment area, from one end to the other, will be protected and can be protected under that act.

Mr Duignan: You're quite familiar with amendment

52. Amendment 52 basically outlaws landfill sites on the Niagara Escarpment, except that if you want to site one you have to go through an assessment process. The chances of a landfill site approval in the Niagara Escarpment are pretty nil, but what's happening is that the communities in which the proposal is being made are put to enormous expense for nothing. It's been going on for 20 years in the Halton region, for example. Are we going to subject every municipality along the Niagara Escarpment to the same process, that when you say no once, it's not enough, that you come back, the third time around now, to say no again? And the taxpayers are paying for that.

Ms Porteous-Koehle: It's happening in Peel, it's happening in Durham, it's—

Mr Duignan: Yes, so we've got to get it—I appreciate you coming along here, Nancy, and participating in this process of democracy. We have met on many occasions, on friendlier terms, but this is part of the process of democracy.

The Chair: Thank you for coming and taking the time to make your presentation to us.

Mr Perruzza: I'd like to take this opportunity to make a short motion, and really to leave it more at your discretion than anything else. I think we should get some people here to have a technical briefing, and speak to some of the ministry people around some of these issues. I leave it to you to find the time and to invite the appropriate people to appear before us so we can talk to them.

The Chair: Are you putting a motion?

Mr Perruzza: Yes.

Mr Stockwell: What do you mean by “get some technical people”? Could you be a little more vague?

Mr Perruzza: I think we should go through some of the technical aspects of the bill, and some of the legal language in the bill, for sure.

The Chair: He's proposing that some ministry people come forward and answer technical questions you might have.

Mr Stockwell: Will we not do that in clause-by-clause?

The Chair: There would be an opportunity in clause-by-clause to ask questions of ministry staff. We could do that.

Mr Offer: How will there be?

Mr Stockwell: We've already said they can't come, though. That's the only problem. The government said they can't come.

Mr Murdoch: Yes, you already voted against that.

The Chair: All right. If you do not want that, that's fine.

Mr Stockwell: No, I'm asking a question. Considering that we've already told them they can't come, how do we get around that hurdle, now that they want them to come?

Mr Chiarelli: You voted the other way before. Why did you change your mind?

Mr Murdoch: Yes, you voted against this.

The Chair: Mr Stockwell, the original motion was—

Mr Chiarelli: You voted against that before.

Mr Duignan: No.

Mr Chiarelli: You did so.

The Chair: If the members do not want ministry staff for questions we can simply overlook the motion and just be done with it.

Mr Stockwell: No, Mr Chair. I'm asking how we do it, since they said they didn't want them.

The Chair: The motion, as I recall, had to do with if the minister could not come and present, that a letter from the ministry be forwarded. That was your motion. What Mr Perruzza's suggesting, which is the third option I thought you were getting at, is that perhaps—but that's fine. Mr Perruzza's suggesting that ministry staff come and answer questions. That's the motion.

Mr Stockwell: Let me just get this clear. It's not as clear as you're suggesting, Mr Chair.

Mr Duignan: I think that's out of order, Mr Chair.

Mr Stockwell: Noel, you can't talk and listen at the same time. They've suggested that the technical answers to the questions—are these technical answers? Were you looking for the engineering and reports and lawyers to talk about legal phrasing, or are we looking at ministry staff to tell us that they in fact support or don't support this legislation?

Mr Perruzza: That may very well be one of the questions you want to ask.

The Chair: Mr Perruzza, could I propose that you withdraw your motion?

Mr Perruzza: I can do that, or people can simply vote against it. I'll withdraw my motion if that's something they don't want to have happen.

Mr Stockwell: Hold it. We're not suggesting we don't like the motion. All we're asking is that you also allow opportunity to question ministry staff on whether they support the legislation.

Mr Offer: As this is a private member's bill, it is my understanding that this committee would not have the

opportunity of a ministry technical briefing. That would occur only if it were a government-sponsored bill. Hence we go back to the original motion. If the government approves of the legislation, I can see it giving us a briefing on a piece of legislation it is supporting. But if it is not supporting the legislation, how is it that they, in logic, can give us a briefing on legislation they have absolutely no intention of seeing through to completion?

Interjection.

Mr Offer: It's not my point of view. And I have the floor. The fact is—

The Chair: Mr Offer, I'm trying to facilitate so that we don't go on and on.

Mr Offer: You can't keep taking this ridiculous line of reasoning.

The Chair: I understand his point. His point is that a technical briefing is based on an initiative by the government saying, "Here is a technical briefing on what we are presenting." What Mr Perruzza may have been proposing was that we have ministry staff to answer questions you might have, whatever questions you might have.

Mr Stockwell: Perfect. I'm in favour.

Mr Duignan: I think the motion is out of order. It is contrary to the motion that was turned down by the committee earlier today. I move adjournment, Mr Chair.

Mr Perruzza: No, we're in the middle of a—

Mr Stockwell: Noel, keep your shirt on. I'm in favour of the motion.

Mr Perruzza: Mr Chairman, my motion does simply this: It gives you the authority, as Chair of this committee, to request ministry people to come and speak to a bill that is properly before this committee. It gives you that ability to do that. That's what it does.

The Chair: All in favour of that? Opposed? That carries by two.

This meeting is adjourned until 10 tomorrow morning.
The committee adjourned at 1629.

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Haeck, Christel (St Catharines-Brock ND) for Mr Winninger
Lessard, Wayne (Windsor-Walkerville ND) for Mr Winninger
Murdoch, Bill (Grey-Owen Sound PC) for Mr Tilson
Offer, Steven (Mississauga North/-Nord L) for Mr Curling
Perruzza, Anthony (Downsview ND) for Mr Mills
Stockwell, Chris (Etobicoke West/-Ouest PC) for Mr Harnick

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Wednesday 16 February 1994



Journal des débats (Hansard)

Mercredi 16 février 1994

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Environmental Protection Amendment Act
(Niagara Escarpment), 1993**

**Loi de 1993 modifiant la Loi
sur la protection de l'environnement
(Escarpement du Niagara)**

Chair: Rosario Marchese
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 16 February 1994

The committee met at 1008 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

ENVIRONMENTAL PROTECTION AMENDMENT ACT
(NIAGARA ESCARPMENT), 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LA PROTECTION DE L'ENVIRONNEMENT
(ESCARPEMENT DU NIAGARA)

Consideration of Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment / Projet de loi 62, Loi modifiant la Loi sur la protection de l'environnement à l'égard de l'escarpement du Niagara.

GLENRIDGE LANDFILL CITIZENS' COMMITTEE

The Chair (Mr Rosario Marchese): I welcome Ms Lynne Matthews and the other two members here from the Glenridge Landfill Citizens' Committee. You have half an hour for your presentation. Please leave as much time as you can for questions.

Mrs Lynne Matthews: Thank you. My husband will be showing the slides.

I'm appearing before you on behalf of the Glenridge Landfill Citizens' Committee. This is a group of over 375 families in south St Catharines. We wholeheartedly support Bill 62 because the disastrous history of our Glenridge quarry landfill on the brow of the escarpment provides a cogent warning of what can happen when landfills are so sited.

Our unique Niagara Escarpment, which has been declared a global biosphere by UNESCO, should not be allowed to become an unlimited burial place for garbage and waste. Common sense alone should indicate that putting a landfill on fractured rock is courting disaster. Although engineering reports may suggest otherwise, it's very easy in the welter of dispassionate technical analyses to dehumanize a crucial social problem. The engineers can go home and leave the impact of their work and the environmental consequences of selecting an escarpment site to be borne by the men, women and children who live within the affected community. Our group came into being as the direct result of such consequences.

Initially, in 1975, Dr Mike Dickman, an aquatic biology professor at Brock University, strongly opposed the application for our quarry waste disposal site on the grounds that the fractured rock of the escarpment was too risky. He monitored the escarpment streams prior to the landfill operation and after its construction, and when he became aware of water quality changes in the escarpment streams he made presentations to council, but his findings were ignored.

In 1983 there had been leachate spills into Leawood Court Creek, an escarpment stream running through the private property of Mr J. Waddell at 450 Glenridge Avenue, located on the side of the escarpment hill. This is a significant stream, as its flow goes underground at Leawood Court and comes up as an open stream in the

wooded valley parallel to and between two very long residential streets. It circles two local schools, goes through a large local park and the golf course and ultimately ends up in Twelve Mile Creek. The repeated leachate spills into Leawood Court Creek became a problem for Mr Waddell, and from May 24 to May 27, 1986, when there were very serious spills for four days, the stream that runs close to his home became a stream of ugly, odorous, frothing leachate. He later moved out of the area.

By 1989, the Leawood Court Creek had become covered with iron oxide gallionella slimes. This is a red bacteria that thrives in the depleted oxygen areas in the stream. It's difficult to see it up there, but the stream is running down in each picture, and you can see how red it's turned. That was once a sparkling stream that people could drink from. Later the city was ordered by the MOEE to remove all the red encrustation from the rocks and sediment, divert the water flow to the sanitary sewer, and pipe in dechlorinated water, a drastic and expensive solution to the landfill's impact on what was once a beautiful, sparkling stream. They were also required to conduct an aquatic biological monitoring program to evaluate whether the stream can be restored to a natural biota. This is still ongoing.

In 1984, the leachate problem spread down the hill to Trillium Lane at the bottom of the hill, when on many occasions toxic leachate erupted like a geyser from the manhole—you can see it coming up the manhole here—and spread over the lane, covering an area of about 50 feet. On one such occasion the leachate went up through the stack vent of the home of Mr and Mrs Syri on the corner of Trillium Lane and overflowed on to the roof. This is what the leachate looks like when it comes up on some occasions, and that was covering the whole of our lane for about 50 feet, and part of our property. It also came up through the basement toilet. This evidently occurred because the leachate pipe from the landfill, which runs down the hill, was connected to the sanitary sewer lines at the bottom of the hill.

In March 1985, during one of the leachate spills on Trillium Lane, we found leachate bubbling up in a large flowerbed in our front garden. That's the flower bed that you can see at the front there covered with white stones. It's about 20 feet long. It's a two-layered flower bed with a depth of about six inches of stones. Underneath that, we had put other stones for drainage of the water, and then the flowerbed is built up on top of that. The city later discovered through the use of an underground television that there was a manhole two feet below the lawn that no one, including the city, knew existed. If you think about it, this is clay soil and the manhole was two feet below the surface of the ground, so that leachate came up through the lid of the manhole, through the clay soil and through our flower garden and spread all over the lawn. We were told to dismantle the flowerbed so the city

could add a two-foot extension to the manhole and bring it up to ground level. It was then necessary for us to redesign a new flowerbed to incorporate the manhole, which you can see there. The planter is sitting now on the manhole. We do our own gardening; we don't get anybody to do it for us.

On June 5, 1986, when we returned from a trip to Europe, we were greeted by the devastation resulting from a toxic leachate backup of eight inches which covered the whole of our basement area. It occurred on June 1, and our son, who was in the middle of spring exams at Brock University, had endeavoured to cope with the situation by hosing as much leachate as possible down the drain. With the help of a 65-year-old friend of the family, Robert Layton, he dragged the leachate-saturated rugs and carpets up on to the lawn, where he hosed them down. However, the water heater was clogged with leachate so we had no hot water. The vacuum cleaner was also clogged and inoperable, and considerable damage had been done to furniture, camera equipment, 125 books and other items.

We called in industrial cleaners to power hose, detoxify and deodorize the basement, and then made innumerable trips up to the dump with the leachate-saturated articles that had to be destroyed. These included the bottom drawer of my cedar chest, which had to be banged out and which contained all our wedding pictures and other memorabilia. Our expenses were reimbursed, but I should say that nothing can reimburse the psychological turmoil or the sense of despair engendered by such a catastrophe, nor the ensuing days and days of back-bending toil in cleaning, scouring and disinfecting everything we had managed to salvage.

In July 1987, a new crisis arose when noxious gases from the dump blanketed the area below the escarpment. On the night of July 27, when fire engines were called, the methane gas readings in the manholes on Trillium Lane, on Woodside Drive, and in our front garden were just below the explosive level.

On August 11, 1987, following another gas buildup in the neighbourhood, the leachate gases filled the homes of Mr and Mrs Stagg and of Mrs Embury on Trillium Lane, and they were up all night trying to get relief from them while the city worked on the problem. By morning, they felt very ill. The gases still filled their homes and the air outside was still saturated. The city engineer said it would take a strong wind to blow them away.

The buildup of leachate gases in the air in the neighbourhood occurred many, many times during the autumn months, making it impossible to sit or work in the gardens. The leachate odour is dreadful. I must say it just defies description, but it has a distinctly unique characteristic which the people in the neighbourhood learned, through repeated incidents, to readily identify.

On December 16, the leachate gases again entered the two homes on Trillium Lane, but this time they also entered homes on Woodside Drive and on Glenridge Avenue. During the next few days, the gases entered and re-entered the homes in an unpredictable fashion until December 21, when they became so concentrated both inside and outside that it was necessary to vacate and

spend the night in a hotel. During that period, which became an absolute nightmare, the residents of these homes were suffering from nausea, vomiting, light-headedness, respiratory problems, stinging eyes and an overwhelming sense of lethargy and apprehension. No one, either then or at any time, warned us of a potential health risk.

From December 18 to December 23, the gardens of six of the affected homes were dug up, P pipes installed and vents attached to the laterals. The vents expelled the leachate gases into our front gardens instead of into our homes.

It's still difficult to verbalize the stress, the anxiety and the deep sense of apprehension that everyone in the neighbourhood experienced during the eight days before Christmas. It seemed impossible to keep the gases out of our homes and gardens and unpredictable when they would again enter.

1020

When the situation was at its worst, there was no way of knowing what the gas readings were, or whether our homes would blow up around us. Christmas Eve was upon us, but Christmas was not present in our homes or in our neighbourhood. Everyone was ill, and muddy tracks to the basement were left unheeded. All the indoor plants died. We were dazed and filled with a deep sense of lethargy. We felt as if our homes had been assaulted and ravaged.

It was decided by the city engineer that a dedicated pipeline would be installed to hook up the leachate pipe from the dump. This would enable the leachate pipe to be disconnected from the sanitary sewer pipelines and keep the gases out of our homes.

On February 20, once more we had a leachate spill all over our front garden and lawn, and once more our garden and boulevard were dug up in order to install a shower in the manhole and connect it to the water hydrant on the opposite side of Glenridge Avenue. However, the leachate gases continued to invade the neighbourhood at times throughout the winter.

In June, work started on the new dedicated pipeline. Two weeks after its completion, we had our first rainfall in two months, and once more there was a leachate spill on July 17 from the new dedicated pipeline near the corner of Trillium Lane. We called the city engineering department, which once again carried out the familiar flushing operation. We also called the regional health office, which sent out an inspector. But by 6 o'clock the following morning, the leachate was up and had spread all over Glenridge Avenue near Trillium.

We called the Ministry of the Environment, and it sent out its emergency services unit and a mobile chemical testing laboratory to take leachate and air samples throughout the day. They ordered the city to carry out remedial work immediately. A crew worked on the problem late into the night and throughout the following two days, during which time the whole area was again subjected to the noxious odours from the leachate.

From 1986 to 1989, the health of one neighbourhood family in particular, the only one with young children,

deteriorated and was so severely affected that consultation was necessary with environmental specialists and other specialists at McMaster and Toronto. Other families in the immediate neighbourhood have all suffered unusual health problems that required special attention. In all cases, these health problems were new and affected people whose previous general state of health had been very good.

For three years, from 1987 to 1990, I had persistent itchy, bleeding sores that gradually spread over most of my body and that no medical treatment could cure. Although I am aware there's no legal proof of any connection with the leachate, I have never previously had any skin problems whatsoever, and it's my belief that the infection occurred from constant gardening in soil that had been polluted by the leachate spills. Both my husband and I have developed heart problems, which can only be attributed to the intense and prolonged stress to which we've been subjected during this period.

As a result of the many leachate spills, the soil in our front garden and in the garden of our neighbours on Trillium Lane had been polluted for five years. In November 1990, all the soil, to a depth of two feet, was removed from both properties—also eight trees, our front hedge and all our shrubs and flower beds. I might say that although I knew it had to be removed, this was a garden we'd worked on for over 25 years and put in from scratch, and I ended up in intensive care for four days. This was the sixth time during those years that we had to have our front garden, or portions of it, dug up, either because of leachate spills or because of the toxic leachate gases that invaded our homes.

The most recent problem, however, with our escarpment landfill relates to a new collector trench for leachate, which was designed in 1989 by the city's engineering consultants, Proctor and Redfern Ltd. Our hydrogeologist, Wilf Ruland, advised that the design plans had potentially serious implications. His concern related to the very deep groundwater, which is extremely saline. Mr Ruland believed there was probably a hydraulic connection between the deep saline groundwater and the shallow groundwater. His hypothesis was that when the proposed collector trench was operational, the deep saline groundwater would be drawn up into the shallow flow system, which would kill the vegetation on the escarpment.

The city's consultants refuted Mr Ruland's hypothesis, but the MOE was concerned and made it a condition of its approval for the construction of the collector trench that the monitors suggested by Mr Ruland be installed in strategic locations below the escarpment so that the water could be monitored before, during and after construction. They also imposed a condition that no new cells at the landfill be used until it could be shown by a year's monitoring after the installation of the trench that there was no degradation of the escarpment streams.

In December 1991, almost as soon as most of the blasting for the collector trench had been completed, the saline readings in the monitors of the seeps below the escarpment skyrocketed dramatically. A forestry tree-testing program was put in place in July 1992 and

extended in area in 1993. Very high levels of sodium and chloride were reported in the soil, and there was also leaf damage.

In 1992, in an attempt to reduce the saline contamination, the valves of the collector trench were turned down. This had minimal effect. The city's consultants are now developing an engineered remedial proposal to try to save the escarpment trees. The Leawood Court Creek has also been impacted by the high salinity, which is threatening the nearby trees.

I should point out that the city has been fighting a very expensive rearguard action to ameliorate the landfill problems. This is expensive for the taxpayers but also expensive for members of our citizens' group, which had to employ an environmental hydrogeologist to ensure that proper remedial action was taken. Quite apart from the cost in dollars, the cost in health and stress to the neighbourhood can never be measured. Our escarpment landfill has been like a Pandora's box that keeps spilling out new disasters year after year.

The original decision to allow the landfill to be situated in a quarry on the brow of the escarpment was based on assurances from the city's engineering consultants that the unique nature of the site, combined with the proposed leachate collection system, would prevent any contamination of the escarpment streams, that everything would be cocooned within a central concave. This has not been the case.

Many of the problems associated with our landfill are related to its location. Although in 1975 it was categorized as state-of-the-art technology, we are now being told that landfill technology was in its infancy at that time and that such problems need not arise with today's technology. Unfortunately, it's today's technology that created the salinity problem in our escarpment seeps and streams that is presently threatening the escarpment trees.

We further submit that the very nature of the fractured rock on the escarpment legislates against any predictability when leachate escapes through the clay liner. No expert seems able to guarantee safety when dealing with the fractured rock of the escarpment.

We're making this presentation because we're very concerned about our fragile environment. We cannot afford to allow the escarpment streams all over the Niagara Escarpment to be polluted by massive landfills, particularly since the degradation of the streams could adversely affect the drinking water of so many people in Ontario. We cannot allow our escarpment trees to be needlessly destroyed. We cannot allow our beautiful Niagara Escarpment to be environmentally damaged in any way by the further installation of landfills, and no community along the escarpment should ever again be subjected to the stress and debilitating experiences that we have had imposed upon us. We have no certainty of what the long-term health implications may be.

We speak with the voice of reason, but also with the voice of horrible experience. We can only hope that the lessons learned from our experiences will serve as a timely warning. Unfortunately, those who ignore history are fated to repeat it. Therefore we strongly urge that you approve Bill 62 and forward it to the House for a third

and final reading so that it can become law just as quickly as possible.

1030

Mr Steven Offer (Mississauga North): Thank you for your presentation and the very graphic display of what the experience has been in the Glenridge site.

You have a situation that is somewhat different from what has previously been the topic of much of the discussion, the application of another company, RSI, to create a landfill. Here you're talking about one that is not to be created but one that has been created and is in operation. I take it from your presentation that you are sharing with the committee your experience from a landfill site that has been in operation in St Catharines.

The city of St Catharines came here yesterday, and I would like to read a portion of its presentation. They say on page 10 that the passage of Bill 62 will prevent any remediation: "Even remediation requiring a certificate of approval could not be undertaken for sites which are closed."

Under Bill 62, even as it is proposed to be amended, there is the thought that remediation work such as you have gone through for many years could not be undertaken. Would you expect that any legislation should at the very least create the possibility of allowing remediation work to be undertaken?

Mrs Matthews: I haven't read anything about remediation not being allowed under this bill. I haven't got legal status here, but I haven't any knowledge that remedial work could not be carried out. I would presume that the ministry would instruct them, as they have in the past, to carry out necessary remedial work.

Mr Offer: The city of St Catharines has said that its reading of Bill 62, without it being amended, is that it would be unable to undertake any remediation work. After listening to your presentation, there is obviously the need for remediation work, certainly in the example which you have brought forward.

Mrs Matthews: Except that I believe any remediation work that is carried out should be subject to very strict examination, because remediation work is—

Mr Offer: No question. I can't imagine anyone disagreeing with that at all. On the basis of Bill 62 and your support for the bill, would you expect that the bill at least contain the provision that remediation work could be undertaken on any existing site within the Niagara Escarpment?

Mrs Matthews: It sounds logical, but as I said, I haven't got the legal implications behind it, so I couldn't pursue it right down to its final, last dotting of the i and crossing of the t.

Mr Noel Duignan (Halton North): Mr Offer failed to mention that there is an amendment to Bill 62 which deals with the question posed by him; the amendment will deal with any remedial work that's needed on existing landfill sites.

Mrs Matthews: What clause are you referring to?

Mr Duignan: I'll give you a copy of the amendment.

Mrs Matthews: I have a copy in front of me. I'm just

wondering where you're referring to no remedial work being allowed.

Mr Duignan: Subclause 1(3)(b)(i) deals with it, and 1(3)(b)(iv).

Mrs Matthews: I see nothing in (i) that would not permit remedial work to be done. Possibly you should ask our hydrogeologist to speak to this. I cannot see that they need to have a higher elevation to do remedial work.

The Chair: Would you like to comment?

Mr Wilf Ruland: I'm on next anyway, so the committee members will have ample opportunity to pursue this.

The Chair: That's fine. We'll do that afterwards.

Ms Margaret H. Harrington (Niagara Falls): Thank you very much for coming. You've given a very clear picture of the horrors the people of Halton don't want to have happen again. There's a very great temptation in our province, and probably everywhere where there are quarries, that people want to fill them in. Obviously, the filling in is very worthwhile in a monetary sense because of the need to put garbage somewhere. What you have said clearly is that any site on the Niagara Escarpment is a real danger. That's what your position is.

Mrs Matthews: That's right, particularly a quarry site, where there's already been blasting for the quarry. The rock is already fractured, and when you have a quarry you're blasting even further, and it sets up a more difficult situation when it comes to the escaping of groundwater and leachate or pollutant. There's no control over where it's going to go.

Ms Harrington: I'd like to point out one thing in your brief that I found disturbing. You said that back in 1975, before this site was even approved, Dr Dickman came forward and opposed the application on the grounds that the fractured rock of the escarpment was too risky a site. Oh, how truthful. Obviously, he was ignored at that point. And further, after the site was being used, he monitored the water quality and found that there were changes and he immediately made presentations to city council. To quote your report, "his findings were ignored" by city council.

Mrs Matthews: Exactly.

Ms Harrington: Do you wonder how that can happen?

Mrs Matthews: No, not when you watch the way some city councils function.

Ms Harrington: Both the city of Niagara Falls and the city of St Catharines are before this committee opposing this bill because they feel they will not be able to do remediation work, which is not the case.

Mrs Matthews: I don't find that remediation work is covered by this. In my quick glancing through it, I don't see that it is.

The Chair: I guess you'll hang around as Mr Ruland makes his presentation.

Mrs Matthews: Yes, I'll be here for Mr Ruland's presentation.

Mr Offer: The point that has been brought forward by both this deputant and the city of St Catharines is

extremely germane to our discussion. It would be interesting to find out whether indeed remediation work is covered by the amendment. The city of St Catharines, notwithstanding the exhortations of Mr Duignan, has said that its ability to provide any remediation work would not be covered by this amendment. The deputants are concerned and have properly and very forthrightly said, "We don't know, but we think we need it." How is it that we are going to know?

Mr Duignan: On the same point, Mr Chair: That's why we have clause-by-clause tomorrow. We will deal with this issue, and we can ask the Ministry of Environment. I understand they'll be here tomorrow morning.

The Chair: The ministry staff will be here tomorrow morning. We'll begin with them for half an hour to ask questions of that nature that they might respond to. Clause-by-clause of course will be done later, and that's where people's differences of opinions can be raised, by way of amendments or otherwise. But the ministry people will be here tomorrow to answer questions like that.

Mr Chris Stockwell (Etobicoke West): Can we do one thing in the meantime, Mr Chair? Can we send the finalized amendments out to those people who have made deputations?

The Chair: I have instructed the clerk to do that to all the deputants.

Is that all right, Mr Offer? I'm not sure we can help you beyond that with the concerns you've raised.

Mr Offer: No, apart from the fact that it's important to have the ministry officials here and I'm looking forward to asking them questions on this bill in particular and in principle.

1040

GREENSVILLE AGAINST SERIOUS POLLUTION

Mr Wilf Ruland: Mr Chairman, members of the committee, I appreciate the opportunity to make this presentation. My name is Wilf Ruland, and I'm a hydrogeologist. I specialize in the study of environmental impacts associated with landfills. If any of you are curious about my technical qualifications, I sent a copy of my CV to the clerk, and she would have that for you. I don't know if she has made copies, but anyway, I'm not going to go into that in detail.

I've been retained by and I'm speaking here today on behalf of a group called Greensville Against Serious Pollution, GASP for short. This citizens' group is one I've been working for since 1988.

To preface my comments, my discussion focuses on whether landfills are an appropriate land use for the escarpment. I'm going to be coming at that from the perspective of hydrogeology, which is my area of expertise. I'm also going to share with the committee a little information about the typical nuisance impacts associated with landfills.

As part of my work, I've investigated many landfills, including two on the Niagara Escarpment: the Brow quarry landfill, which is near Greensville, the one I've investigated for GASP, and the Glenridge quarry landfill, which I've looked at on behalf of Mrs Matthews's group, near St Catharines. I've gained an understanding of the

hydrogeology of both sites. My evidence today is going to cover three broad topics: The first is potential nuisance impacts of landfills; the second is potential hydrogeologic impacts, impacts on groundwater; and the third is a study of the two case histories, the Brow quarry landfill and the Glenridge quarry landfill on the escarpment.

I'd like to get into more detail, first of all, about the potential nuisance impacts of landfills on the environment. Landfills can have a number of nuisance-type impacts. Some of these tend to be restricted to the landfill property itself, but others can extend far beyond the property boundaries of the landfill and negatively affect surrounding areas to distances of up to several kilometres away.

Potential nuisance impacts you might see with a landfill include the following: Landfills are perceived by many people to be visually offensive; landfills which contain organic wastes, food wastes, will attract vermin; the machinery working at landfills is noisy; landfills bring with them an increase in truck traffic; they're a source of litter as well as of dust, and the litter and/or the dust can blow offsite in strong winds; and landfills produce odours and gases which are perceived by many people to be offensive.

A picture is always helpful. I've got a couple of pictures from Essex county landfill 3 that I thought I'd pass around. The pictures being passed around are not unusual in any way. They're of an operating landfill, a landfill operating within its license, legally. This is just what a landfill looks like. It might be interesting for committee members to see that.

The nuisance impacts are ones that are observed personally, and there are also ones I've heard about from people I'm working for in the course of my work. But the main focus of my presentation today is in my own area of expertise, and that's possible hydrogeologic impacts of landfill.

I'll just by indicating that the types of impacts a landfill might have on groundwater are impacts either on the quality of groundwater or on the quantity of available groundwater, sometimes on both, and those impacts occur because of something that's called leachate.

Leachate is the contaminated liquid that's generated at all landfill sites. It forms when rain falls on to the landfill, seeps through the wastes, leaches chemicals out of the wastes and basically picks up contaminants as it goes. Some of the chemicals picked up in leachate from the wastes in the landfill are potentially hazardous; they can have very serious impacts on human health. The leachate tends to contain potentially hazardous wastes or potentially hazardous chemicals because hazardous wastes go into landfills in small quantities. This happens around the province. There doesn't seem to be any way of keeping small amounts of hazardous wastes from getting into landfills, and as a result we have to expect hazardous chemicals in the leachate that's coming out of landfills.

I've got a couple of pictures of what leachate from a landfill looks like, just in case you've not seen this before. Again these are from Essex county landfill 3. The leachate tends to be either a bright red or a black colour. It gets that colour from the iron that's commonly found

in the leachate, and depending on the oxidation state of the iron, it tends to have a red or a black colour. The leachate you'll see here is red.

The reason landfills have impacts on groundwater is because, despite the best effort of landfill engineers, over the long term pretty well every landfill is going to leak to some extent and it's going to cause some contamination of groundwater. This is something that's been recognized by the US Environmental Protection Agency. You'll see on page 2 of my statement the quote at the bottom. That's from the US EPA, out of the Federal Register on February 5, 1981. The EPA indicated that:

"There is good theoretical and practical evidence that the hazardous constituents that are placed in land disposal facilities"—what they mean is landfills—"very likely will migrate from the facility into the broader environment. This may occur several years, even many decades, after placement of the waste in the facility, but data and scientific prediction indicate that, in most cases, even with the application of best-available land disposal technology, it will occur eventually."

What they're saying is that a landfill will eventually leak, and all the experience I've had in my working life only goes to underline that statement.

If we have impacts on groundwater quality in the escarpment setting, the type of thing we might see is the contamination of springs and seeps on the escarpment face. If that contamination is serious, it can lead to that water becoming undrinkable. It can lead to vegetation die-offs in the area around the spring. We can also have contamination of groundwater supplies below the escarpment, and that contamination can spread over considerable distances, hundreds, even thousands of metres.

The other type of impact on groundwater you might see from a landfill is an impact on the quantity of groundwater available, and the reason that might occur is because, at most landfills, measures are undertaken to try and contain the leachate to keep it from getting out into the broader environment. These measures usually involve the creation of something called a hydraulic trap, which is a lowering of the water table in the vicinity of the landfill to catch all the leachate to make sure water's flowing into the landfill, not out of the landfill. Millions of litres of water have to be pumped to create such a hydraulic trap, and as a result the quantity of groundwater available downgradient to the escarpment is reduced. That sort of pumping to create a hydraulic trap usually has to be maintained for decades, if not longer.

In the setting of a landfill on the escarpment, such a lowering of the water table could have the following impacts: the drying-up of seeps or springs on the escarpment face and a loss of water to escarpment streams or a loss of water to escarpment wetlands; in addition, you can have a loss of groundwater supplies for domestic purposes downgradient of a landfill. Certainly landfills can have these sorts of impacts.

1050

The escarpment setting being a fragile one, the impacts can have serious consequences. With respect to the escarpment environment, of course there are environ-

mental policies and guidelines in place in Ontario. Those policies and guidelines are designed to prevent the types of impacts I'm talking about and the types of impacts Mrs Matthews has talked about from occurring. Unfortunately, experience has shown that these sorts of policies and guidelines can't guarantee protection of the environment from leachate-derived groundwater contamination.

I'd like to suggest to you that as a result, the hydrogeologic setting of the site, if you will, tends to be a very important factor in determining what locations are suitable for landfilling. Some sites have got a hydrogeology that's more suitable, other sites have a hydrogeology that's less suitable for landfills.

A number of aspects of the escarpment environment make it particularly unsuitable for the siting and operation of landfills. These have to do with the fact that the escarpment is an outcrop of intensely fractured bedrock. I've got another picture for the committee. This is a picture of the Brow quarry landfill in Dundas, and it shows you that fractured rock of the escarpment, with the landfill right there.

On page 4 of my brief, I've put together for the committee a number of factors that were considered by the joint board at the Halton hearings, a major environmental hearing that took place a couple of years ago when it was assessing the hydrogeological suitability of potential landfill sites. I've listed the board's factors in italics on page 4 and I've provided the committee with my own opinion about how those factors might apply to landfills along the escarpment.

The board said, "The hydrogeology of the area must be comprehensible." The fact is that fractured bedrock hydrogeology is very complex. It's poorly understood, one of the least well understood areas in my field, and it's less easily comprehensible than the hydrogeology in most other areas of the province.

The board said, "The loss of contaminants should be minimal as a result of either natural containment or engineered works." Natural containment is just the site itself, and engineered works of course are liners and that sort of thing. For sites on the escarpment, you can't count on the environment to give you any protection. You've got to do all the work yourself: You've got to put in very radical engineering measures to contain the leachate.

The Halton board said it prefers sites where natural containment and attenuation of contaminants occurs as opposed to sites that rely on engineered containment and attenuation. Escarpment sites, as I said, have to rely on engineered works. The board would consider those sorts of sites to be less preferable.

Another very important point the board indicated is that if contaminants move away from a landfill site, the contaminant migration pathways should be predictable. The escarpment setting is anything but predictable. Fractured bedrock flow is very unpredictable.

The fifth point doesn't really pertain to hydrogeology. I'll skip that.

The sixth one is that monitoring that's done at landfills to identify contaminant migration pathways should be straightforward. Again, in the escarpment setting monitor-

ing is anything but straightforward. Monitoring fractured bedrock is very, very difficult, and I speak from experience here.

Finally, "There should be the highest possible confidence in the effectiveness of contingency measures to intercept and capture lost contaminants." If you have contamination leaving a landfill, the board is saying you should have a good possibility of intercepting it and capturing it again. In the escarpment setting, such contamination is going to be more difficult to find, it's going to be harder to track, to intercept and to capture than in most other hydrogeological settings in the province of Ontario.

I've been about 10 minutes. I've got a couple of case histories to talk about with the committee. I'll spend a bit of time on the Brow quarry and not much at all on the Glenridge quarry. Mrs Matthews has told you about that. But I'll be happy to answer questions if there are any.

The Brow quarry landfill, the one that was on the picture that just went around, is owned and operated by Steetley Industries Ltd. They're now called Redland Quarries Inc. The landfill opened in 1979. It was in operation for about 10 years and was licensed only for disposal of 100% non-hazardous industrial wastes. I've studied that site since 1988. The landfill is located in a former quarry on the Niagara Escarpment. In fact, most landfills on the escarpment are located in old quarries. The quarry was excavated up to 25 metres below the ground surface.

Groundwater flow in the area of the Brow quarry landfill is from the quarry towards the escarpment, and downgradient of the landfill, on the escarpment face, groundwater discharges in the form of seeps and springs.

When the landfill first went into operation in 1979, there were no measures at all undertaken to protect the groundwater of the escarpment. Wastes were simply dumped on to the floor of the landfill. The quarry has now been filled with wastes.

The leachate from the landfill—this is the contaminated liquid in the landfill that was just draining freely out of it—has got high levels of total dissolved solids, salts and organic constituents. Measurable levels of potentially hazardous chemicals such as benzene have been found in the leachate and have been draining freely into the escarpment environment.

A collection system was installed late in 1986. The company eventually recognized that it had a problem on its hands. After that system went in, they figured they were collecting about 50% of the leachate being generated. The other 50% was still going out, and that's millions of litres a year of leachate. The company's own consultants, Golder Associates, in a report I've got with me, estimated that in 1990, 50% of the leachate was being collected and the other 50% was still draining out.

Golder Associated testified at a hearing before the Environmental Assessment Board. In their report before the board, they indicated that the seepage loss from the Brow quarry landfill would combine with groundwater flow in the underlying formations and discharge as springs on the escarpment face or as seepage beneath the

talus on the escarpment face. Based on this balance, seepage from the landfill represents about half the water discharging at the escarpment face. We've had a real impact on the escarpment setting here.

The company has done monitoring of ground- and surface water quality since 1978, and the results of the monitoring program confirm that water contaminated by landfill leachate has escaped and continues to escape the site.

I've got a couple more quotes from the Golder report on page 6 of my brief. Impacts on groundwater quality have been recognized by the firm's own consultants. This isn't stuff I'm making up; this is their report. On page 87 they indicate, "The highest concentrations of leachate-related parameters in the downgradient groundwater at the Brow site were encountered beneath the western half of the landfill at...Spring S-W1." That's a spring on the escarpment. Further on in the report, they say, "Spring S-W1 appears to be in large part leachate derived from the overlying landfill."

With respect to another spring, the same report states: "The installation of the leachate collection system"—this is after six years of operation of the landfill—"also eliminated a leachate spring that developed on the upper slope of the escarpment below...the east end of the site. The spring which developed in 1985...represented a breakout of saline leachate water from the lower lift area and resulted in a local vegetation kill around the spring."

There have also been impacts on surface water quality—this is streams I'm talking about—as a result of the Brow quarry landfill. There was direct flow of surface water across the landfill and over the escarpment during heavy rain events and during spring snowmelt. This was observed again by the company's own consultants.

As well, there have been increases in total dissolved solids and salts in Sydenham Creek attributed to seepage from the apple orchard part of that landfill. That site was in operation for years. It's been closed since 1989. To date, the company has neglected its responsibility to properly carry out final grading or to apply final cover to the landfill. It's simply been left standing in an unfinished state, four years now, since they halted operations at that landfill.

1100

With respect to the Glenridge landfill, I've got a couple of observations to share with you on page 7 of my brief. I'll go through those rather quickly. Mrs Matthews has covered most of these.

The first one is that the presence of the Glenridge landfill has caused the contamination of a creek which collects water from the base of the former quarry area. In that creek there were exceedances of provincial water quality objectives for iron throughout the 1980s. The creek was contaminated with faecal coliforms.

The most serious incident was from May 24 to 27, 1986, when the creek was filled with a black, frothing, odorous leachate. That creek has since been diverted to a leachate sewer. The city now pipes city water up to the top of the escarpment and has that run down the creek bed. The creek itself is so badly contaminated that

they've had to, in essence, write it off and divert it to the leachate sewer.

Groundwater quality around the landfill is deteriorating as well. Test results have now shown the presence of chlorinated organic contaminants such as trichloroethylene—again, potentially hazardous—in four monitoring wells above the escarpment on the east side of the landfill.

To deal with that, the city installed the collector trench Mrs Matthews was talking about. They blasted a trench into the bedrock to collect shallow groundwater. As we had predicted, putting in that trench caused problems of its own, which resulted in saline groundwater upwelling from depth. That's led to the salinization of springs on the escarpment and it's had an impact on the health of trees on the escarpment.

Finally, points 4 and 5 are the ones testified to by Mrs Matthews. I don't need to go over those. There were great impacts on local residents in the Glenridge neighbourhood.

In conclusion, I'd like to indicate to the committee that based on my review of two specific escarpment landfill sites and my understanding of the geology of the escarpment, it's my opinion that landfilling along the escarpment is generally not desirable from a hydrogeological perspective.

In my experience, even in a suitable hydrogeological environment like a flat area with very deep deposits of clay, even in those environments, it's a challenge to design, operate and monitor a landfill such that hydrogeological impacts are kept to an acceptable minimum. The lack of natural containment along the escarpment combined with the unpredictable nature of groundwater flow in the escarpment area make this an undesirable setting for siting landfills.

The Chair: We have run out of time, but if there's a quick question each caucus wants to ask, we'll permit it. If it's not quick, I'll cut you off.

Mr Bill Murdoch (Grey-Owen Sound): I take from your brief, and you finished up with this, that there aren't very many places a landfill site can go.

Mr Ruland: Oh, no, there are lots of places.

Mr Murdoch: Maybe you can elaborate on places a landfill site could be.

Mr Ruland: Generally, if somebody put me in charge of a landfill site search, I'd be looking for an area that provides natural containment, an area with thicker deposits of siltier clay-type materials. There are lots of them around the entire area of Windsor-Sarnia, all the way out to London, just south of Hamilton. That's where most of the landfills in that area go, just at the top of the escarpment around Smithville, Ancaster, north of Toronto as well. There are all sorts of sites.

Mr Murdoch: In the rural area of the Niagara Escarpment plan, though—

The Chair: Mr Murdoch, we don't have time for that. Mr Duignan, do you have a question?

Mr Duignan: It's your conclusion, based on your experiences in the Brow quarry and the quarry in St

Catharines, given that they were engineered to the technology of the time and that, as I say, they will engineer the Acton quarry to the technology of this time, given your experience the Niagara Escarpment is no place to site a landfill site.

Mr Ruland: I would just remind you again of the statement by the EPA, that landfills will eventually leak no matter how hard you try to keep them from doing so.

Mr Offer: A landfill that has been closed out, you've just indicated, will eventually leak somewhere down the line. In that event, is there approval required to fix a landfill that has been closed out and is leaking? Is there some approval before that work can be undertaken?

Mr Ruland: There quite possibly would be. It's an approval required from the Ministry of Environment. I heard your questions of Mrs Matthews, whether the bill as amended would preclude that sort of thing. I'd like to share with the committee my thoughts on that.

In the amendment as I've got it before me, if you want to be absolutely sure that remediation isn't precluded by the bill, I would suggest that in clause 1(3)(b) there be a change made in the fourth line: "to enable the site to be remediated or operated in a more environmentally sound manner." If you put the words "remediated or" in there, for sure you're leaving that door open, and I would encourage you to do that. There are sites around the province where remediation might be necessary.

The Chair: Mr Ruland, thank you very much for taking the time to come today, and Mr and Mrs Matthews. Thank you for presenting to this committee.

FURIOUSLY OPPOSED TO ACTON DUMPING

Ms Diane van deValk: Thank you for the opportunity to address you today. Dr Landry will be speaking to you for about 10 minutes, and I'll start off this morning.

When I was thinking about the issue that's facing you, I thought the Niagara Escarpment is really a motherhood issue. It's a UNESCO-designated World Biosphere Reserve. We all know it's unique biologically, we know it's unique geologically, so why is it that this bill is not a cakewalk? That's the question. Why isn't it a given that we're going to go ahead and give this bill the green light? In thinking about it, I came up with two possible reasons.

The first is that there are those of you who believe that the Environmental Assessment Act works, so we should let it run its course; that it's the act itself that's designed to protect the environment, so let it do its job, and why do we need this bill?

The second reason I could come up with was that we really are that desperate here in Ontario for disposal solutions or disposal options.

Those are the two possible reasons I could come up with. I would like to address each one of those. I hope I'm not giving too much overlap, but we'll do the best we can.

With regard to the Environmental Assessment Act, as you all know, the act was written for public sector undertakings. In an ideal situation, what you have is a municipality, for example, coming before the act and saying, "The purpose of this undertaking is to find a

disposal option." As a result of that definition of the purpose of the undertaking, the proponent is required to evaluate, first of all, alternatives to disposal, so they have to look at all those things like 3Rs and composting, and secondly they have to evaluate alternative sites. They have to say, "This is the best site that we've come up with based on environmental criteria."

There are all kinds of problems associated with the Environmental Assessment Act, and we know those from various municipal undertakings, but now let's look at the private sector undertaking that we're experiencing in Halton Hills. I'm a resident of Halton Hills.

RSI has defined its undertaking not to find disposal; it's defined its undertaking as to make money. Suddenly, what they have to look at in terms of their alternatives is very different. What they're looking at in the way of alternatives to disposal, 3Rs and composting—they're saying, "No, we don't have to look at those because they're not economically within our projections." It might cost, let's say, \$75 a tonne to compost and \$20 a tonne to dispose, so if the purpose of the undertaking is to make money, why do they have to look at 3Rs and composting? That's exactly what RSI has done.

Second, in terms of alternative sites, again in an ideal situation you look for alternative sites that are best from an environmental standpoint. That's not what they have to do, because they've defined the undertaking as finding a spot to put garbage at which they can make money: a very different proposition, because in their evaluation of alternatives they looked at only the sites they own or have an option to lease on. That's a very different situation, obviously, because they've eliminated sites because they're too far away. That has nothing to do with the environment.

The problem we see in the application of the Environmental Assessment Act, public versus private, is that the spirit of the act is not followed. That's clear.

1110

The second reason I came up with as to why this bill is not a cakewalk, why there is some concern over carrying on with it, was that we really are that desperate here in Ontario for disposal options that we would consider putting a landfill in this internationally recognized location. We're desperate.

In thinking about that, we have to address the discussion of alternatives. Invariably, the point is raised that if we can't put it there, where are we going to put it? Where's the best spot for a landfill? But maybe that isn't the question. Maybe the question is, what else can we do with our garbage? Clearly, decades and decades of massive landfilling and incineration throughout this continent should tell us that massive landfilling and incineration are not the solution. I can guarantee you, if we put a landfill in the escarpment, 20 years from now the issue's going to be back before us again. We won't have solved the problem, will we, because we still have this need for the big holes in the ground to dispose of our garbage.

I just want to go over my background so that you know where I'm coming from in relation to the 3Rs and

composting. I am project manager of Wastewise, a waste reduction and recycling centre in Halton Hills. I'll tell you a little bit more about that in a minute or two. I've been the project manager for three years. I was qualified by the Environmental Assessment Board as an expert witness in 3Rs and composting in a landfill hearing in relation to the Kitchener Street landfill in Orillia.

I was the recycling coordinator of the city of Mississauga for two years. I was the regional coordinator of an onsite industrial waste management project for one year.

Right now I'm working with a group of 48 organizations that are interested in creating a brand new association called Association for Reuse Organizations. This is a really exciting development in moving up the 3Rs hierarchy, looking at how we can get together to better facilitate reuse in the province.

I was on the executive of the Association of Municipal Recycling Coordinators for one year. I am a director of the Halton Hills Chamber of Commerce, and have been for two years. I was an external adviser to a Ryerson architectural student in designing a reuse facility for Toronto island.

As far as my community connections are concerned, I'm a director of FOAD, Furiously Opposed to Acton Dumping. I'm a director of ICE, Incineration Counteracts the Environment, and have been for three and a half years. I've been a member of POWER, Protect Our Water and Environmental Resources, for three years. I was a director for two years of the Mississauga Citizens Environmental Protection Association.

In terms of speaking engagements, just to give you an indication of what I've done in that area, I've spoken for the Ryerson environment science and applications course. I've spoken for Canadian Unified Students Environmental Network at a regional conference. I've spoken for the Sierra Club in Gainesville, Florida; St Lawrence University in Canton, New York; Action Garbage in Montreal; the Association of Municipal Recycling Coordinators for the Recycling Council of Ontario; Peel outdoor educators; for the composting and recycling of solid waste short course in Madison, Wisconsin; and a composting seminar for the Technical University of Nova Scotia.

What I bring to you is a suggestion that disposal is no longer the solution, so 3Rs is the solution. Composting and 3Rs are what the real question is here: How are we going to press on with 3Rs and composting?

I told you I'd tell you a little bit more about Wastewise. Wastewise is a registered charity. It has four main activities happening out of the centre. The first is waste reduction education. We knew there was an awful lot of information floating around provincially through various groups and organizations, all the way from the Ontario Waste Management Exchange to the Recycling Council of Ontario to the once Waste Reduction Advisory Committee.

There's information at all these bodies, but what we learned was that locally, businesses weren't aware that these places existed, so there needed to be some sort of a local mechanism for exchange of this information.

Residentially, again information needed to be exchanged: What's the problem with household hazardous wastes? What are the alternatives to household hazardous wastes? How do you compost? and so on.

Waste reduction: a really important part of the work we do.

Reuse: I'm sure there isn't anyone in this room who hasn't driven around a neighbourhood on garbage day and looked at the pile and said: "Geez, that thing looks okay. What happens to be wrong with that?" There are plenty of increased opportunities for reuse.

In Halton Hills we have the Salvation Army, but it's not addressing all the reuse possibilities that exist so Wastewise created a large flea-market type of operation to encourage people to look at this stuff and consider it in terms of its potential to serve somebody else's needs. We also have a repair function. It's clear that there's a problem with the economics when it costs more to fix a kettle, let's say \$20 to \$30 in labour, when you can go buy one for \$12. Does that mean the kettle is garbage? I suggest it doesn't mean it's garbage. I suggest it is a problem with the economic system. Perhaps virgin materials are too heavily subsidized and that's how come you can make a kettle for \$12 rather than fix one for \$20 to \$30. The repair is a really important function, and we have volunteers helping us with that.

Finally, we have recycling for materials that extends well beyond the blue box program. We have eight different grades of paper, seven different types of plastic, we have scrap metal, we have corks, elastics, bread tabs, egg cartons and so on.

What we've done at Wastewise is that we've said if we want to fix the garbage problem, we'd better open up the green bag, because as long as we're dealing with a green bag, what are we going to come up with in the way of solutions? We're going to come up with landfill and incineration because we don't know what's in there. Until we open up the green bag we're not going to figure out exactly what it is that we have to do.

Wastewise is just one community effort, and it's a community effort that resulted from the pressure our community has been faced with as a result of the seven-year battle with RSI to settle landfill in the escarpment.

There are other examples, really interesting reuse examples. We have the Restore Store in Brantford focusing on construction waste: windows, doors, sinks etc. That's a for-profit facility. We have the Reuse Building Centre in Scarborough, also for-profit, same types of materials. We have Hobo Hardware in Guelph, all reused materials. We have Value Village, a for-profit chain that's basing its business on used clothing. We have Play It Again Sports, 600 outlets in North America, 12 in Ontario, with six slated to open, all based on used sporting equipment.

Composting: We're told that 50% of residential waste is organic if you include kitchen and yard waste—50%, so let's get on with it. In my town they collect brush and leaves four times a year, that's it, and yet what we're saying here is that 50% of the residential waste in Halton Hills could be reduced if we were to actually compost the

stuff instead of sticking it in a green bag.

I detect I'm losing people. Come back.

The Chair: The only point I want to make is that after Dr Landry speaks we will have run out of time for questions if you speak a little longer. It's up to you.

Ms van deValk: I'll wrap up. I think I made my point that the key to finding alternatives to disposal is saying no to further disposal options. If approving this bill puts the pressure on at least one more spot, so be it, because that'll be a step in the right direction. We'll say, "No, this is an important area." That's one more pressure point, one fewer spot to put garbage in this province. So be it. If that means we're going to be able to force ourselves up that waste management hierarchy, it's mission accomplished, because that's exactly what we're trying to prove.

Wastewise would not exist and these other centres I've mentioned would not exist if there wasn't pressure from disposal options. That's clear. There are recycling examples that we could go on to discuss. Atlantic Packaging in Whitby would not exist if there wasn't a large-scale urban supply of newsprint in this area. It's clear that disposal pressure creates alternatives.

I'll close there. I was going to use a quote, but I won't.

1120

Dr Leonard Landry: My name is Dr Len Landry. I'm a family physician from Halton Hills. I grew up in Halton Hills, moving there when I was four years of age. I currently live in Speyside, Ontario, which is on the Niagara Escarpment itself, so every day of my life I've looked at the Niagara Escarpment on the horizon, not having done much travelling out of Ontario.

I thank you for the opportunity to hear my views as I lend my wholehearted support for Bill 62. Thank you to Noel Duignan and the NDP, and also thank you to the opposition Liberal and Progressive Conservative parties, because it was your common sense and support that established safety within the Niagara Escarpment in the years gone by and who also saw it become a biosphere reserve under the United Nations.

You've all heard Lynne Matthews speak. I'm so glad she could make it here today. There's little to be said after hearing her talk. Do you think her life or the life of her neighbours will ever be normal again medically, mentally, anything? In the sense of epidemiology, we as doctors, as physicians, are barely scratching the surface. There is enough work to be done with the current problems we have.

My view is, let us not risk new studies by making new mistakes. You look at the Niagara Escarpment, and it has possibly two or three points which might have engendered this interest in waste facilities. It is isolated. There are a lot of holes in it, for various reasons. In some areas, we're told it has this curious flow of water which makes landfilling and other operations unique and reliable. This has since been disproven at Glenridge. You've seen the pictures. Do these points make the Niagara Escarpment the best spot for waste facilities? I say to you, no way. The health effects at Glenridge should make that very clear.

You'll recall seeing the signs. I'm certain you saw the pictures; I have copies myself. They're not exactly postcards you would send from a vacation in this area. It's disgusting what has happened at that site, and I think Wilf Ruland's statements bear that out. I'm not going to repeat his analysis of that particular site.

In medicine, as physicians we always, every day, have to weigh benefits versus risk in something we do. I ask you to weigh that same thing in this situation here in considering Bill 62. In medicine, if we prescribe a medication, there are benefits and there are also risks. If the benefits outweigh the risks, we prescribe it, or if the treatment benefits outweigh the risks. In this scenario, the establishment of a waste facility on the Niagara Escarpment, a very fragile environment, the benefits of waste disposal facilities do not outweigh the risk to the people living around them. I must emphasize that the risk is to a wide population that such proponents rarely consider.

We keep hearing about engineering of safe projects. This, ladies and gentlemen, is not an engineer's game, for God's sake. All landfills will leak. I will make that more firm than Mr Ruland. By the second law of thermodynamics, the process of entropy, all nature seeks disarray; therefore all landfills will leak, all cars will break down, and all houses will need repairs—especially mine. More technology equals more engineering, therefore more that can go wrong.

The best things in life, I propose to you, are simple: natural environments, natural acts. Am I an expert? No way. I'm not an expert. What we do when we analyse proposals from proponents is that we use their own experts and we find enough information right there—it makes us sound like experts—such quotes as, "In a certain area, a landfill would cause contamination of a nearby town's water some time in 28 to 230 years, but a worst-case scenario would be three years." I go on to quote that individual, that so-called expert for the proponent, by saying, "By that time, we would be on Lake Ontario water anyway."

That brings me to the point that in our communities many of us are on wells we treasure, that are precious to us. The thought of drinking Lake Ontario water is repulsive to us. The fact is, though, that by contamination of the headwaters from which many rivers flow from the Niagara Escarpment into Lake Ontario, that Lake Ontario water is going to get worse. The International Joint Commission talks about things like the biosphere reserve, the need for protection of special areas, the headwaters, restoration of degraded areas, non-degradation of already high-quality areas, the history, the value of the Niagara Escarpment.

I will conclude by saying first that doctors like myself are just beginning to become aware of health effects. We need to study patients like Mrs Matthews, like her neighbours, where they have breathing problems, where they have blood count problems, where the kids have learning problems. Second, physical effects are one thing; mental health aspects are often neglected. There's tremendous mental abuse going on with proposals of such facilities. Third, remember the benefit-versus-the-risk profile in any decision you make. Do the benefits of the

establishment of waste facilities on the escarpment outweigh the risks? I say not. It is too risky. The Niagara Escarpment must be protected. I support Bill 62 with the strongest part of my heart.

I would invite you all to come out to Halton Hills. I think we have a pretty self-sufficient community with Diane's Wastewise project that we mentioned, with the establishment of our recent landfill which, although it has problems, was the clear choice over an alternative landfill in Burlington. We could have pushed it farther away, but our community chose that the Milton site was the best site. Milton's close to home. We aim to show all of you, when you come out to visit us, that we have a community to be envied, and we wish that other people would envy us as well and would protect the Niagara Escarpment in our area as well as in all areas of the NEC.

Ms Harrington: Thank you very much. You've both spoken very powerfully. I think we all agree that there are areas that have to be protected, such as the Niagara Escarpment, but this bill begs the question, are there other areas across this province that might fall into the same category?

Ms van deValk: I would suggest, based on my presentation, that every area of the province should be spared a landfill or an incinerator. Every area of this province should be protected from those two sources of the stresses Dr Landry mentioned. As long as we focus on the 3Rs alternatives that I discussed—in fact, we've got to consider this whole province as being an area worth protecting.

Ms Harrington: At this point in time, garbage is a fact of life. I certainly agree with you that we can try to reuse everything we possibly can. In fact, my husband has a Play it Again Sports business. But we still do put out green garbage bags; I don't know if you do. But at this point in time, landfilling is still, and into the future, very much a part of Ontario. Are there other areas you think should be protected from landfill?

Ms van deValk: I just want to add to that by saying again that yes, the whole province should be protected. Second, we were in this sort of landfill crisis debate in the 1970s when Keele Valley was opened. Now here it is 24 years later and we're prepared to dump on Maple again. My argument is, in 24 years, where did we get? I have a book that was published in 1977 called *The Garbage Book*, published by the office of energy conservation. It was during the energy crisis. That book talks about 3Rs: reject, reuse and recycle, and it talks about composting. My question is, where have we come since 1977?

Ms Harrington: I'm sure we have graphs to show that there's a lot more composting and recycling going on everywhere, but it's not 100%; maybe it's 50%. We still need landfills.

1130

Mr Robert Chiarelli (Ottawa West): I have more of a comment than a question, and it relates to the comment you made at the beginning of the presentation about trying to figure out why people are resisting this legislation or appear to be resisting this legislation. That's not

my perception of what's happening. We have an obligation on the committee to make sure the bill works and that it properly functions.

When we started these hearings, there was no amendment. An amendment was produced. That amendment didn't exist before. We now have one of the presenters suggesting an amendment to the amendment. We have the city of St Catharines coming before us, presumably with some kind of a mandate representing the people of St Catharines, to suggest that the bill in its present form is not acceptable.

I can't remember any bill that's come before a committee and gone through the process that's had a cakewalk or a free ride. It's our responsibility to refine it, to make sure there's fairness and equity. Indeed, I think there is still a significant legal flaw in this legislation, which will be dealt with tomorrow in clause-by-clause. If that is not rectified, I think it leaves the door wide open, for example, to RSI to challenge this bill. We have to ask the tough questions, we have to look at it. I don't think there'll be very many pieces of legislation that will get a free ride before they go out the other door. That's our responsibility.

Ms van deValk: That's right, and I think that's a good thing. It isn't resistance I detected; it was an analysis of two possible reasons there might not be support. The purpose of my presentation was to analyse those two possible reasons there might not be support. I don't profess to know all the reasons you might have for choosing to support or not support. I just looked at two of them.

Mr Stockwell: My concern comes also from the Ministry of Environment, which has very clearly dodged this piece of legislation.

Laughter.

Mr Stockwell: I don't know why that brought laughter. They're not coming out and saying they support this bill. They've not come out and said they don't support it, but they just haven't come out and said they support it. What is it about this piece of legislation that has left them, supposedly the leaders in the landfill and 3Rs issues—why have they put themselves in the position of sitting on the fence, straddling the issue? If they came out today and said, "We're 100% in favour of this piece of legislation. We are going to call it for third reading," you'd probably end up with a lot less discussion here because we know it would be going through. But as they haven't, what's the big question mark?

Dr Landry: I think we could answer that, but we could get into really difficult legal issues. I'd be willing to talk to you any time, Chris—Mr Stockwell—about that.

Mr Stockwell: Chris is fine. Maybe we should have a little chit-chat, because I don't know.

Dr Landry: We have seen similar resistance from the MOE to act in our community on issues related to these ones. We should talk at some time when we could clarify the issues, but there is an explanation.

Mr Stockwell: So are they going to support it in the end, do you think?

Ms van deValk: Ask them.

Laughter.

Dr Landry: And that's why the laughter. Begging your pardon, but some people are familiar with how—

Mr Stockwell: With the story. Thank you.

The Chair: Dr Landry and Ms van deValk, thank you very much for taking the time and the interest to present to us this morning.

HICKORY FALLS RATEPAYERS ASSOCIATION

Ms Daphne Shropshall: Good morning, ladies and gentlemen of the committee. I am hoping my voice will hold out, so if I have to take a break occasionally, please forgive me. This cold was not very good timing.

My name's Daphne Shropshall and I'm here this morning to speak on behalf of a small ratepayer group, the Hickory Falls Ratepayers Association, who live on the Niagara Escarpment between Georgetown and Acton in Halton Hills. We formed as a group approximately four years ago to attempt to raise the awareness of all levels of government to the concerns of those of us who live not only in the escarpment but also in any rural area of the province.

Since forming as a group, we have addressed not only the local municipality but Halton region, the Niagara Escarpment five-year review and the Sewell commission. Our concerns are varied, but the overriding consideration for any rural resident is the quality and quantity of our water supply.

Our membership in Hickory Falls Ratepayers covers a wide diversity of ages, occupations and lifestyles. We range from young couples, both of whom are holding down full-time jobs to maintain their homes, to retired residents who have lived in that area for 20 or 30 years; from farmers whose roots in the area go back four or five generations—we do have century farms in the area—to farmers who have moved to this area more recently and now have young families who are involved in operating a family farm; from young couples just starting their families, to those in my own age bracket who enjoy having grandchildren. In other words, we're a very ordinary, varied group of people, just like the majority of the residents on the escarpment. But the thread which joins us all is a respect for the rural lifestyle and for the Niagara Escarpment.

I'm here today not as an expert in any particular field such as geology or hydrogeology or on behalf of some commercial concern looking to make a large profit, but on behalf of the hundreds of your constituents in this province who have made their homes on the Niagara Escarpment or close to it. We believe the escarpment is unique and deserves special protection. The Niagara Escarpment plan and the UNESCO designation reinforce our belief. Surely those who voted for the original plan did not envision the area becoming a focal point and magnet for garbage dumps, but the temptation is there because of the quarries and the pressure exerted by our modern society.

Recently, garbage has become a lucrative business, and a map of the escarpment will show you the many, many quarries, both old and new, which could be used as

landfills. The area of the escarpment in which we live in particular is directly between two landfill proposals. One is an old quarry which is being suggested as a fill site for construction debris, and of course the RSI. Both of them are a potential threat to our local water supply if they're allowed to proceed.

1140

I'm here to speak for those of us who rely on the aquifers of the escarpment for that basic necessity of life which is water. Bill 62 will serve to protect the water supply of every person who happens to live close to a quarry, those who in the future could face the horrendously expensive and lengthy hearings, using taxpayers' dollars, just to protect their water. Experience has shown and consultants have told you that the fractured limestone of the escarpment is not a safe medium for landfill sites. Other experts will try to tell you that there would be no problems. Whom are we to believe? More important, who has to face the consequences? Certainly not the proponents of the landfill sites—it's not their water that's at stake—nor the hearing officers and consultants who make the decisions. We, the residents, face the consequences, with no guarantees and, even more important, no alternative source of supply.

Bill 62 will take away that doubt and uncertainty for us. It will say a straight no to any landfill proposal on the escarpment. The rules will be clear. I am here to ask for some common sense in supporting this bill. When experience has shown that landfill sites become polluters of the environment, no amount of reports, lawyers, hearings and arguments can alter that fact. No guarantees can be offered to us, and the decisions are irreversible. If we cannot save the escarpment, protect this special, narrow band of land, then what hope is there for the rest of Ontario? Please give your support to Bill 62.

Mr Tim Murphy (St George-St David): I just have a couple of questions. One of them is quite specific, actually, and you might not know the answer; I certainly don't. I gather there is a distinction between the plan area and the planning area. Are you aware of that?

Ms Shropshall: I wouldn't call myself an expert on it. I know the boundaries of the Niagara Escarpment plan area. I'm sorry, I'm not aware enough to answer.

Mr Murphy: I'll leave that for later. I gather the ministry will be in.

I represent a downtown Toronto riding, so part of this process is an education for me. The concept that we should protect the escarpment is a good one. We've had a set of rules that have been in place for a while; some people have relied on those rules. There is a perception, and probably rightly so, that this bill is aimed at one particular project in Halton, the RSI project, and has an impact all across the escarpment area. The question I really have is one of fairness in the process. The RSI project has been under way for a number of years. I gather they've gone up once, come back down again and may be in the process of reapplying again, something like that. Anyway, there is a process under way. The way this is drafted, it is basically saying that (a) that project is stopped and (b): "No matter that you've spent money all along under rules we've agreed to, at least up until the

point this bill is passed. You can't get any of that money back. It's just tough luck."

Assuming that this bill passes and has the effect of stopping that project, do you think it's fair to those people who relied on the old rules and have spent a lot of money on the basis of the old rules to not get any compensation for what they've at least spent to date?

Ms Shropshall: My answer to you would be, is it fair to us, the taxpayers of Halton Hills, to carry on that fight which is so fundamental to the good of the whole town? We are spending taxpayers' dollars fighting a corporation which stands to make millions. Where is the end benefit for the taxpayers?

Mr Murphy: I understand that. I'm asking my question on the assumption that the bill passes, that it's already stopped so the taxpayers of Halton Hills no longer have to spend money to fight the project through the process we've established to date.

Really, it's a bill targeted to a person. For example, say you were constructing an extension on your house and we decided that on the escarpment area, it was just unfair, that from now on we don't want any more building of any kind on the escarpment. You're halfway through the extension to your house and we pass a bill to stop it. Do you think you should be given some money for the money you've put out to build the extension to the point where it stopped?

Ms Shropshall: I don't think the RSI proposal has reached that stage. If it had been a good proposal, I believe it would have been accepted in the first place and wouldn't have dragged on over this number of years. But I'm here this morning not specifically to talk about the RSI proposal. I would like to point out that the escarpment travels right up to Tobermory. There are a lot of empty quarries, and any of those quarries could become a landfill magnet. The rest of the residents on the escarpment are going to be in exactly the same position that the people of Halton Hills have been in for the past few years.

Mr Murphy: I understand your point. For those quarries that exist but for which no proposal has been made, there is no fairness issue because no one has spent any money. This bill would stop them, so we don't have to worry about anybody having spent money under the old rules. This would stop any new proposals, and there's no unfairness in that. On that point, we agree. Well, I think the question has been asked and answered. Thank you.

Mr Offer: You've spoken eloquently about the need to protect the Niagara Escarpment. Would you agree that the protection should be for any development on the Niagara Escarpment and not just be limited to landfill sites or waste management systems?

Ms Shropshall: No, I don't believe that at all. I believe if development is appropriate, by all means, but have some perspective on what is appropriate and what will not damage the ecology of the escarpment, because it is a very delicate balance. As a rural resident, going back to water, we are very conscious that our water supply is down there. Without it, what would we have?

Nothing. We have no alternatives.

Mr Murdoch: Just to carry on from what Mr Murphy was talking about, he mentioned there's a planning area and the plan and things like that. When it first started, it had a huge planning area in Ontario, but when the plan was finally recognized and passed into an act, it was the Niagara Escarpment plan area. That has basically three different areas. It has a natural area, and I think that's the area you're mostly concerned about, and then they have an area called a protected area which goes out from it, and then beyond that again they have an area they call the rural area. The problem I have with this bill is that it takes in all three areas.

Maybe in the Halton area and further south, basically all you have left is the natural area, but when you get up into our area, it broadens way out and has these other areas: the protected area and the rural area. We heard earlier today that a good area for a dump site would be heavier soils with clay; it was mentioned by a professional earlier. In our rural area that's the kind of soil that does exist. The rock face could be three miles away.

You see, that's the problem we have with this bill, that they'll just pass it and say it's all the Niagara Escarpment plan area. If it was amended to take in your natural area, which I think you're concerned about—and most of the quarry pits are in natural areas, because that's where the rock is, the stone they wanted.

Ms Shropshall: I myself am a resident of the Niagara Escarpment rural area, and I believe the aquifer underneath my property is connected to the rest of the area.

Mr Murdoch: It could easily be, but in our area, that's where the clay and the proper soil is. Some of the area would be fine.

Ms Harrington: You'd like a landfill, would you?

Mr Murdoch: No, I'm not saying we would. Nobody will say they want a landfill site. I'd be surprised if anybody would. But there has to be one, unfortunately. The lady who spoke said there shouldn't be one in Ontario, and that would be nice. If we put a bill in, who would object to a bill that there wouldn't be one in Ontario? But the unfortunate thing is that landfill sites, like you said, are a way of life. Sometimes when a county does a study, they have to look at every area, and in our area it may have to be in this rural part. This bill encompasses everything, and that's why there's a problem with it.

1150

Ms Shropshall: Could I ask you a question, Mr Stockwell? Oh, Mr Murdoch. Sorry.

Mr Stockwell: Ask me the question and I'll translate. When do I get my question? That's all I want to know.

The Chair: Ms Shropshall, please go ahead.

Ms Shropshall: If a landfill proposal was put forward in your area and your constituents from your area came to you and said, "We do not believe this is a safe site," who would you listen to, your constituents or the proponents' consultants who are going to gain by being able to make a profit?

Mr Murdoch: You have to look at both sides. We

have a system in place now in the province, and I believe it is working. I would have to listen to that system and work through it that way. I wouldn't come here and propose a private member's bill to stop that one site and inflict it on everyone else. In my mind, I'd have to look at all the questions and answers and decide. At this point, I couldn't make that decision because I don't have one proposed. In the past I did, and I stuck up for—

Ms Shropshall: Maybe you are fortunate.

Mr Murdoch: No, just a minute. I was going to say that in the past I had one, when I was reeve of my township. I didn't think it would work because it was on a hill and we were told by the experts—who sometimes are wrong because they said water doesn't run downhill, so it was hard to believe that. I opposed that one, and that was the right thing to do, because it has run downhill. I'd have to look at it.

The Chair: Mr Stockwell, would you like to ask a question?

Mr Stockwell: Just a quick comment mostly. First of all, there isn't a municipality in the province that is going to go out and invite landfill sites per se in the way you've outlined it. As a member of Metropolitan Toronto council, we tried to site a landfill site within the general area and there wasn't anyone who wanted that landfill site other than Kirkland Lake, which was rail-hauling it way up north, in an open quarry actually, in a mine.

Interjection.

Mr Stockwell: Eight hundred kilometres, someone says. It may well have been.

The difficulty I'm faced with, with this piece of legislation, is that there are many people who would argue that putting a landfill site on grade A agricultural land is a huge mistake, some 600 acres or something in Peel or York or Durham. That's what this government's doing, so be forewarned. They're putting it on grade A agricultural land. They're expanding dump sites in Peel without so much as one second of environmental assessment hearings, expanding sites considerably with not a second of hearings. Further to that, they're going ahead with expansions and have talked about lifts at Keele Valley without so much as one second of public hearings.

So I am a little cynical when a private member of the government who voted for expansions without a second of public hearings, who's putting 600-acre dumps on grade A agricultural land, suddenly finds the light and introduces a private member's bill that happens to be in his own backyard to call for "no dump sites in my area."

If the process is good for me and the process is good for my constituents and others' constituents, why the hell is the process not good for your constituents?

The Chair: Any comment?

Mr Duignan: I wouldn't waste my time. It's not worth a comment.

The Chair: Okay, Mr Duignan, questions?

Mr Duignan: We've just listened to the usual warped ramblings of Mr Stockwell and his vision of life.

Thank you very much for appearing here this afternoon. The question, though, is that it's not out of kind-

ness that RSI wants to site a landfill site in the Acton quarry or anywhere else. It's out of kindness to their pocketbooks to the tune of about \$2 billion, I understand, as the potential profit from this particular site.

Mr Stockwell: Who's profiting from those sites in Peel, Durham and York? You, the government. You're making the money.

Mr Duignan: I do have the floor, Mr Chair.

The Chair: Yes, go ahead.

Mr Duignan: And it's certainly not out of kindness to humanity.

Could you tell us why your ratepayers' association came into being?

Ms Shropshall: We came into being because we were concerned about the integrity of the Niagara Escarpment. We believe it is a very special area. We're very fortunate to live there and—

Interjection.

Ms Shropshall: I'm sorry?

Mr Murdoch: I'm just talking to myself.

Ms Shropshall: It's certainly very offputting.

We believe it's a very special area and should be protected. We're seeing encroachments just through the sheer pressures of being close to a very heavily populated area, and we believe it should be kept for the people of that area. We live very close to the Bruce Trail, and we enjoy showing people which way to go when they're lost walking along the road, putting them back on the trail. We enjoy the wildlife, and one of our members has an agreement forest which he operates with MNR.

There are a lot of reasons we came together as a group, and we fully give our support to the Niagara Escarpment Commission. Sometimes we wish the plan was a little more sure, because after going through an OMB hearing in trying to uphold the plan, we've certainly seen how wording can be interpreted when it can be taken in a couple of different ways.

Mr Duignan: Of course, the proposal by RSI to site garbage in the Acton quarry is that it would be a private landfill site and would be accepting garbage from right across the province. Not only would you have a garbage site, but the residents of Halton Hills would have to put up with the large garbage trucks that would be coming in on a daily basis to that particular site, as well as the quarry trucks which will be sited at the quarry next to it.

In fact, there is no application for a landfill site as far as I know at this point in time, as of February 14, to look for a certificate for landfill in the Acton quarry. As far as I know at this point in time, there is a request for an amendment to site a landfill site at the Acton quarry, but it's not yet been formally initiated by RSI at this point in time.

It's my firm opinion that they don't deserve it, because since the original ones turned down in 1991 to the present time, for example, an application under the Conservation Authorities Act: No new documentation has been submitted by RSI. Under the Lakes and Rivers Improvement Act, nothing new has been submitted, but I understand they are working on it. An application under

the Regional Municipality of Halton Act: The region of Halton has not received any new documentation to date. Application under the Water Resources Act: They have not submitted any new documentation to date. Application under the Aggregate Resources Act: No new documentation has been submitted on behalf of RSI. Application under the Planning Act: Halton region has not received any new documentation to date; Halton Hills has not received any new documentation either. And with the application for a certificate of approval, as far as I know at this point, no new documentation has been submitted.

What they're trying to do is play games with people of Halton Hills, and the bottom line is to line their pockets with a lot of money they're going to make from the dump sited in the Acton quarry.

Ms Shropshall: And leave us with the problems.

Mr Duignan: Yes. If you look at the directorship of RSI, only one of them lives anywhere on the escarpment. The rest of them are either in London, British Columbia, or in New York state or Connecticut.

Mr Stockwell: Tell them you waived every one of those acts to expand three sites.

The Chair: Ms Shropshall, do you have a comment to that?

Ms Shropshall: No.

The Chair: Very well. Thank you very much for taking the time to give your presentation to us this morning.

Ms Shropshall: Thank you.

Mr Stockwell: Go out and tell every one of your constituents you waived every one of those acts.

The Chair: Mr Stockwell, please. Can we do this after the meeting?

Mr Stockwell: Tell them. Tell them what a hypocrite you are, Noel.

Mr Anthony Perruzza (Downsview): On a point of order, Mr Chair.

The Chair: That comment would not be a point of order, Mr Perruzza.

Mr Perruzza: Calling someone a hypocrite is not a point of order? If you recall—

Mr Stockwell: Mr Chair, it just gets to me after a while. He waived every one of those acts for three landfill sites—

Interjections.

The Chair: A bit of order, please. Mr Stockwell, it's not helpful.

Mr Stockwell: I apologize. I withdraw.

The Chair: Mr Murphy, your question.

Mr Murphy: Mr Chair, through you to Mr Duignan or perhaps the parliamentary assistant, the amendment and Bill 62 apply, it says, to the plan area. The question I was asking this witness was about the distinction between the planning area and the plan area. It's quite straightforward: If there is an operation in the planning area, does this bill extend to it?

Mr Duignan: I think I filed with the clerk the definition of the various areas to be circulated to the

members. This particular bill, as defined in the act, is confined to the plan area.

The Chair: All right, Mr Murphy?

Mr Murphy: Thank you.

The Chair: Very well. We'll recess until 2 o'clock.

The committee recessed from 1201 to 1406.

CITY OF NIAGARA FALLS

The Chair: Mr Lustig, from the city of Niagara Falls, welcome. You have a half-hour for your presentation.

Mr Edward Lustig: At the outset, Mr Chairman, I should advise you that I am aware that a draft amendment to the bill has been suggested. I became aware of that this morning. I will refer comments on that, if you will indulge me, to after I finish this presentation. This presentation was prepared on the basis of the bill that exists presently in the form that was given two readings. It deals with the bill as it was, and then I'll address comments I have after reviewing in a somewhat cursory manner the amendment proposed later.

I'm the chief administrative officer for the city, and I'm here today on behalf of the city to present this brief on what we feel is a most important matter. You might note, at the back of this material is a resolution that was passed the day before yesterday by the council of the city to authorize this presentation.

At the outset, I would like to thank the committee for taking time to hear this submission and finding the extra time to accommodate the city. I understand we weren't originally on the schedule, but you made time for us and we appreciate that.

The purpose of our brief is to voice concerns with Bill 62 as it's presently written. Our brief, which I will read, describes our reasons for opposing this bill in the context of waste management in the city of Niagara Falls.

The city owns and operates a solid, non-hazardous waste disposal operation described as the Mountain Road landfill site. This landfill has operated continuously since 1967 and is designated by the Niagara Escarpment plan as an "escarpment rural area." It is therefore within the Niagara Escarpment plan area and subject to Bill 62, should it be approved in its present form.

In October 1993, the city received a favourable decision from the joint board which will allow the continued operation of the Mountain Road landfill site for the next seven years. To obtain this approval, the city spent over 10 years and several millions of dollars to produce technical studies and complete other work necessary to support our application.

A primary activity undertaken in support of the approval was the city's participation in the proposal of the Niagara Escarpment Commission, amendment 52/89. The city allocated time and resources to contribute to the discussion on amendment 52, and our participation resulted in significant revisions being made to that amendment. Amendment 52 now provides that any significant changes to the Mountain Road landfill will require application to the Niagara Escarpment Commission to amend the Niagara Escarpment plan. The application would require a comprehensive technical submission

that addresses environmental and planning matters.

It is important to note, however, that the city has no plans to expand or significantly alter the Mountain Road landfill site. Indeed, it is a condition of our recent approval that the landfill be closed no later than seven years from November 1993.

Before we offer our reasons for opposing Bill 62, we do note that the city is working diligently to establish a long-term waste management system. The city is involved with three other municipalities in developing the Niagara north waste management system plan. The objective of that exercise is to establish a new landfill site and a comprehensive waste diversion system. It is estimated that a new landfill will take another seven to nine years before a location can be identified, the site approved and made ready for waste disposal. During this interim period, the city must rely on its Mountain Road landfill site.

Of interest to the standing committee is that the city recently approved its strategy for identifying a new long-term landfill site. We note that our search will specifically exclude looking for a new landfill site within the Niagara Escarpment plan area. Our actions demonstrate that we are not opposed to the spirit of Bill 62 but rather its potential effect on our current landfilling operations.

We have reviewed the one-page brief entitled Background on Bill 62, which is undated and we assume was produced as a rationale in support of the bill. It is our view that this background does not provide any technical or scientific information in support of Bill 62. Certainly, proposed legislation with the significant implications that Bill 62 might have requires comprehensive scientific and technical argument in its support. More importantly, the background paper appears to address the establishment of a new landfill as opposed to the continuation and closure of the few existing landfills that are now operating within the Niagara Escarpment plan area.

The city, as noted, opposes Bill 62 as written as it has the potential of seriously affecting the continued operation of our landfill site. It is the city's view that the Environmental Assessment Act, the Niagara Escarpment Planning and Development Act and the Environmental Protection Act provide the necessary protections and offer more than adequate opportunity for public participation to any application to establish a new waste disposal site or to expand or alter an existing disposal operation.

Bill 62 would serve no useful purpose and could in fact, in its strictest interpretation, prohibit the city from making any changes or alterations to its operations which may be required to improve the environment or satisfy the concerns of the public or the Ministry of Environment and Energy. The operation of a waste disposal site requires a degree of flexibility to allow ongoing improvements to be made to its operations and design. This is an ongoing process of upgrading and improvement common to landfills located within and outside the Niagara Escarpment plan area.

It is the city's view in reviewing Bill 62 that it is not in the community's best interests to provide any further controls or burdens on the city's ability to operate the

Mountain Road landfill site. It is also our view that the passing of Bill 62 could seriously affect the city's ability to continue the operation of the landfill. This would have serious consequences to the city. For example, it is estimated that if the Mountain Road landfill were closed, the city would be faced with at least \$5 million to \$6 million in additional annual costs to export its waste to another facility.

It is the understanding of the city that the intent of the amendment may be to prohibit a new landfill proposed in the Acton area. If so, Bill 62 is not the proper process for addressing the application. Furthermore, if the intent is to prohibit the establishment of new waste disposal facilities in the Niagara Escarpment plan area, Bill 62 should be amended to reflect the specific purpose of the legislation. Bill 62 now casts too wide a net and may have the effect of seriously impeding environmentally acceptable operations such as the Mountain Road landfill. It is important that the standing committee seriously examine the intent of Bill 62 and consider whether it is necessary in light of other provincial legislation that currently exists.

As it is written, Bill 62 would prohibit the operation of other types of waste management facilities such as recycling and compost facilities, which most feel have a positive effect on the environment. Therefore we feel Bill 62 should also be amended to be specific to the establishment and operation of a waste disposal site.

In our view, if a site selection process consistent with provincial requirements identified suitable areas within the Niagara Escarpment plan area for composting and recycling, these should be considered. We note that there are designated areas within the Niagara Escarpment plan area, urban and minor urban areas, which may be suitable for these kinds of operations. The total prohibition of these opportunities through the broad, sweeping effects of Bill 62 is inconsistent with provincial policy to seek and examine all reasonable opportunities.

The city would support either of two courses of action by the standing committee with respect to the bill:

(1) Outright rejection of the bill on the basis that it is unnecessary, duplicates existing legislation and is not in the best interests of the community. This course of action would recognize that the Niagara Escarpment plan has been recently amended to address the matter of establishing landfills within the Niagara Escarpment; or

(2) Amend Bill 62 to specifically note that it applies only to the establishment of a new waste disposal site within the Niagara Escarpment plan area. This could be done by altering the language in subsection 1(2) by removing the words "use, operate, alter, enlarge or extend" and simply refer to the establishment of a new waste disposal site.

Another alternative would be to develop a new subsection that reflects the specific current concerns and situations in the city of Niagara Falls.

In conclusion, I wish to take this opportunity to thank the standing committee for receiving this report. If the committee has any questions, I'll be pleased to attempt to answer them.

Before any questions are directed towards me, I

mentioned at the outset that I had a cursory review of the draft, and my comments on it are as follows. First of all, I would like to have the opportunity to have more time to review it with our technical staff, which I haven't had yet. Obviously it's not yet enacted, it's a proposal, and one would expect that it would be coming forward in some sort of legislative form. There are two areas of concern I have with it, however.

First of all, clause 27(3)(a) might not conform with what is in amendment 52/89, and I'm not completely clear on the exact wording of 52/89. I had some discussion with ministry officials just before we started, and this may or may not be a problem, but it would be desirable to have as great a degree of conformity as possible in that area.

Second, in clause 27(3)(b), the use of the words "environmentally sound manner" raise questions of interpretation that I'm not at this time able to completely understand or know. I think it would be wise to allow us a little more time to consider the implications of those words. There may be other reasons as well, including safety and financial concerns, in addition to the words "environmentally sound manner," and that's something the committee might consider as well.

In spite of this draft, it's still our position that we would prefer that the bill either not proceed at all or that it be directed, as the explanatory notes indicate, towards new landfill sites only and not involve those seven or eight sites that have already been approved and no doubt will end their existence in a relatively short period of time.

Mr Offer: My first question, and it is terribly unfair because you've already indicated your response to the amendment, had to do with the phrase "environmentally sound manner." I say it's unfair because I was going to ask you, who do you think is going to decide what is an environmentally sound manner? Have you received any notification about who makes such a decision?

Mr Lustig: As I mentioned, I had a brief discussion with the Ministry of Environment and Energy official who's present here today, and there was some discussion about that. I have no ideas myself, but I presume it would be someone within the ministry. That's something that perhaps the ministry people themselves can respond to.

As a lawyer, that kind of language gives me some concern because it is subject to interpretation, and if it is too strictly interpreted we would be at some risk.

Mr Offer: In Niagara Falls there is a landfill and it is operating.

Mr Lustig: Yes.

Mr Offer: And it is scheduled to close by the year 2000, I would imagine.

Mr Lustig: Actually, we have a decision from the joint board that we presently petitioned the cabinet to consider changing. The decision of the board was essentially to allow us seven years. The evidence before the board at the hearing was all consistent with us requiring nine years; the opposition did not, in our view, advance arguments that suggested it shouldn't be nine years, so that's the ground for the petition to the cabinet. We have

one that's working, and we hope it will be allowed to be open for up to nine years.

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Mr Offer: Where is that now? You obviously don't have the certificate—or do you have the certificate for the further duration of time?

Mr Lustig: We have the certificate, but it is now subject to this petition to the cabinet. We were operating on an emergency certificate that had been extended on several occasions, but I believe the effect of the decision of the board and the certificate that has been issued, subject to this appeal, must be to allow us to continue to operate.

Mr Offer: Basically, if this bill is proclaimed prior to that petition which is now on the doorstep of cabinet, having had a decision, you're caught.

Mr Lustig: I would hope that was not the interpretation. That's not the thrust of this argument. It isn't that we may be caught because there has been this appeal that may not resolve the decision until after this bill is passed. Our feeling is that we're all right in that regard. Our concern is more related to things that might crop up during the remaining life of this landfill that might require us to make some changes, for environmental reasons, for example, that we would be precluded from doing by the wide prohibition that this bill would—

Mr Offer: Could you give me an example of some of the concerns? Now I understand that what you're saying is that you've got a landfill, it looks like you're going to have a capacity until the year 2000 or so. Your concern is not that Bill 62 stops that, but rather that 62 may impede some things that will take place between this point and its close date.

Mr Lustig: That's my understanding. If I'm not correct in that, my submission would include that point you've raised, that we ought not to be caught in view of the fact that we have a pending petition to the cabinet that has not been determined yet. But my understanding is that our certificate is good and allows us to continue in spite of this bill.

Mr Offer: But I'm wondering if you could provide an example of to what it is that you're concerned about, if you are not caught. I mean, it's a much larger issue if you're caught on the petition. We're going to get a total clarification of that, I can assure you, because that would be somewhat interesting for the city of Niagara Falls to have to go through.

Mr Lustig: If you were to know the history of the trials and tribulations of our application, which goes back years and years and years, it would be particularly interesting to find out that we were caught in that. But, hopefully, that's not going to be the case.

One example, and it appears to have been covered by the draft amendment, has to do with recycling types of facilities. That's one example. But another example or examples might have to do with monitoring systems and changes we might have to make in the landfill itself during the course of its life that might be viewed as an enlargement or an extension, or some steps that might have to be taken, new technology or whatever, to deal

with the environment, and we wouldn't be able to accomplish those, as well as safety features. I can't be more specific than that. Those are the areas we are concerned about.

Ms Harrington: I think we have a clarification now that it is not the intent of this bill to stop remedial work on this particular landfill or any landfill but that the intent is to stop any new landfilling within the escarpment.

Certainly you and a whole lot of other people in Niagara Falls have worked very hard to try to address the problems of waste management in Niagara Falls. It's been a very long process. In that vein, I'd like to make a comment and maybe have you respond.

On page iii, in the paragraph "Position of the City of the City of Niagara Falls," you state "that the Environmental Assessment Act, the Niagara Escarpment Planning and Development Act and the Environmental Protection Act provide the necessary protections and offer more than adequate opportunity for public participation" etc for any new landfill disposal site. Having been through that type of process over many years, wouldn't you say that it is extremely costly and that the bottom line is that there should not be landfilling on the Niagara Escarpment? The point of this bill, wouldn't you agree, is that the answer is no landfilling, that you don't have to go through all these various acts because it shouldn't be there anyway and it costs too much to go through all this.

Mr Lustig: My response to that is that the effect of those three pieces of legislation makes it expensive to locate a landfill site anywhere, including on the Niagara Escarpment. It's a very expensive process, as you're very well aware, no matter where you locate. My other comment would be that we have specifically, as this brief points out, in setting the criteria for this search for a new landfill site, excluded the escarpment as an area that we will consider for our next site; that is, in Niagara north. We've gone on record as excluding that from possible consideration.

Ms Harrington: I was just pointing out that that is one advantage: Where you have this United Nations biosphere—we know how fragile that particular environment is—why go through this huge process to say no at the end, when it should be saying no right at the beginning? And hopefully, these three acts can protect the rights of the people of Ontario to decide where a landfill should go in the rest of Ontario.

Mr Duignan: Indeed your suggestions are very useful and we will take them into consideration when we go into clause-by-clause tomorrow.

The fact is that most municipalities act in a very reasonable and responsible way; they know it will be expensive to go through the amendment 52 process. But what we're dealing with here are private landfill sites that don't act responsibly, that don't act in the spirit or the intent of amendment 52, such as the case of RSI. They're putting to enormous expense communities such as Halton Hills, which has spent to this point in this particular application some \$800,000 in fighting a private landfill proposal for the Acton area. The intent of this bill is to close off that loophole that wasn't covered in amendment

52, and that is the simple intent of this bill.

Mr Lustig: Might I suggest, if that's the case, that you could exclude all municipally owned and operated landfills. That would get St Catharines and Niagara Falls—I understand St Catharines was here yesterday—off the back of this committee.

Mr Duignan: As I said, we will take a serious look at the suggestions you've made here today and take them into consideration at clause-by-clause tomorrow.

Mr Stockwell: Talk about all municipalities being excluded from the process. Peel, Durham and York would be really interested in being allowed to spend some money to fight the process, but the government has legislated against any ability to fight anything it's legislated on the three 600-acre sites.

If the timing falls into place as you hope it would fall into place with respect to your appeal at the cabinet, everything's fine. But in the event that it doesn't fall into place, and this bill gets adopted and cabinet has not dealt with the appeal, it seems to me there's very little, other than a direct amendment at your specific site, that could solve your problem.

Mr Lustig: Earlier on, we dealt with this matter, and it was my view, subject to further interpretation and advice, that that is not going to be the effect of this legislation. Our concern is related to our continued use of the landfill with a certificate and our ability to do some of the things that may be necessary to protect the environment with respect to our existing landfill. But I've reserved the right to make the argument that you and your colleague have advanced in the event that we do fall into this situation, where our petition to the cabinet closes the door. I don't think, though, that that is the effect we have with respect to that issue.

1430

Mr Stockwell: You're looking for an expansion, is that correct?

Mr Lustig: We were given an approval by the joint board and we have a certificate, but we have appealed a petition to cabinet about it just with respect to the number of years the certificate applies to. As I say, it's my understanding that regardless of this bill, that certificate will be good. That's not the principal reason I'm here today.

Mr Stockwell: I understand that, but it's kind of an interesting point that I'd like to pursue.

Mr Lustig: It's very interesting.

Mr Stockwell: Where is it that you feel you're protected with the amendment should the procedures fall differently than you're expecting?

Mr Lustig: If Mr Offer's and your scenario is correct, we wouldn't be protected at all, because we would be into another approval.

Mr Offer: And you couldn't get it.

Mr Stockwell: That's right. With this Bill 62 in place, you couldn't get it, so you'd really be up the creek without a paddle.

Ms Harrington: This morning we heard about the terrible situation with the Glenridge landfill in St

Catharines and how the people who live below the escarpment have had the leachate right on their street, their gardens and their homes. The Niagara Falls landfill is in a similar situation in that it is right in the escarpment. Why is it that we don't have the same kind of thing happening below our landfill site? We've got Highway 8 running along the bottom of the escarpment and homes along Highway 8. Have there been any incidents where leachate has come out below the escarpment?

Mr Lustig: Not to my knowledge.

The Chair: Thank you, Mr Lustig, for making your presentation.

ROB BARLOW

Mr Rob Barlow: I'd like to thank you, Mr Chairman and committee. I've been to the Legislature many times, but I never thought I'd be here speaking. I used to meet my local member from Renfrew county down here over lunch about ambulances and fire extrication vehicles. Today I'm here on a totally different issue.

I'd like to start off this afternoon with a quote: "It is a requirement, not a luxury, to protect the environment." That was stated by Indira Gandhi, who lived half a world away from us in one of the most populous nations in the world. I hope this statement can be a guiding principle which this committee should consider with this private member's bill.

This bill is vitally important because it is a litmus test for the escarpment. If I were any other company thinking of doing such a facility in the escarpment, I would let somebody else do the spade work for me. If you remember Dofasco, it always waited till the Steel Company of Canada settled its strike and then it had the same contract. As a businessman, if somebody else were going to take the lumps, I certainly would wait until I found out what the process was going to be. I guarantee you, there are others waiting in the wings to see what the outcome of this process will be.

As I've watched the hearings since Monday afternoon, I'm appalled by the number of pieces of paper that are generated. Do you realize how many trees you legislators consume in a year? I have my presentation here on a disk. Unfortunately, I had to print it on a piece of paper, because there isn't a monitor I can use here. I'm quite happy to distribute this to you over electronic mail, but the mail for the Tories and the Liberals won't talk to the NDP one. I don't understand that.

Mr Stockwell: It's not just the mail.

Mr Barlow: Also, unfortunately, I have found out since this that only two parties here have real computers. The Liberals obviously thought the initials "IBM" stood for International Business Machines, when it really stands for "I bought Macintosh."

Mr Duignan: We're trying to find them as well.

Interjection: Computers are just a passing fad, anyway.

Mr Barlow: That's what they said about radios and cars too.

Technology is indeed one of the components that

proponents of waste fills base their proposals on, that they will be using state of the art. But this state of the art always seems to be attempted for the first time on the project, not as good scientific process would dictate: by tests over an appropriate length of time, starting with small sites and working up as the technology is proved out.

Technology is a funny creature. In the 1950s, we all thought punch cards would last for ever. Then we found out moisture got into the waxed cards and fluffed them up so the card readers couldn't read them. So we invented magnetic tape, which would last for ever. When it came time to retrieve information from the thousands of tape records of the Voyager probes, they found out that data was being lost. Now they are transposing the data to CD-ROMs, which now have questions about how long they're going to last—and this is high-tech.

I was a senior manager on the Canadian space station program and I can tell you that we were working on state of the art. We had a design for a grapple device for locking on to the station. Under NASA specs, we had to run the test 35 times without failure. We couldn't get past two or three at Spar. If you want to go to Mars, any of you, you're welcome, because I'm staying here. There is no CAA vehicle to follow you out there in space with spare parts.

As you get older, you understand that one's infallibility is moderated over time. If I were a 30-year-old engineer, I'd probably tell you that I could guarantee anything. If I were a 50-year-old engineer, I might put some caveats along with that guarantee. If I were 70, I might be able to see if my 40-year-old faith was as well founded as I thought it would be. You must remember that Mother Nature is a very powerful force and that no matter what humans attempt to do, in the end, Mother Nature will always defeat what man has done.

Let's assume that landfilling is allowed in the Niagara Escarpment. We can all understand that this geographical formation is not high on the list of natural containment formations, that engineering solutions will have to compensate for this deficiency. So who are going to be the canaries in the mines to warn us about potential problems?

I also remind you that in the Acton quarry case, should it become a landfill, at least for the next 20 to 30 years there will be ongoing quarrying operations and blasting operations within 200 feet of that quarry.

I'm going to make a suggestion here: that every director of the companies, their families, their lawyers, and a select number of major shareholders who have an interest in that facility must live on the site. They have to drink the water, breathe the air and source their food from all the land around, and even if they were no longer directly involved in the future of that company or that interest, they would be committed to living there for the rest of their natural lives. That would be natural justice, in my view. I doubt that anybody would be willing to make that commitment. If something happens to the canaries, then at least we would have some advance warning.

Professor Larson yesterday talked about the unique

ecosystem that is still intact in the Niagara Escarpment lands. He explained how we cannot continue to remove the links in the chain without eventually destroying this long-term monitor of the wellbeing of this planet. His comments were in relation to 700 kilometres of this ecosystem that exist within the Niagara Escarpment plan area. His comments of sacrificing small pieces of the escarpment so that other areas can be spared is critical to the long-term preservation of the escarpment.

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There seemed to be a view expressed by some on this committee that it would be acceptable to sacrifice quarries along the escarpment for use as landfill, that this would only be disturbing one of the links. One must remember that there are over 2,000 quarries that exist in the Niagara Escarpment plan area. That's a lot of links.

Certainly, in relation to the 700 kilometres, each individual quarry site is relatively small, agreed, but in a particular watershed, the potential environmental damage is substantial and, in many cases, irreversible for many decades or centuries, if reversible at all.

Let's look at the Acton quarry, for example, which straddles two watersheds. Eventually, a leak from this site would affect Black Creek, which is a cold-water fishery. It flows into Silver Creek. At that point, it flows past the major wells that supply Georgetown with drinking water. It then continues on to the west branch of the Credit and eventually into the Credit River. At the same time, possibly the Sixteen Mile Creek water course would be affected by the same problem. Now you have two major river systems in the west part of the GTA contaminated.

If one knows one's geography, the next link in the puzzle is Lake Ontario. As this contamination moves eastward by the shore currents, it will pass a small, insignificant community called Muddy York, whose people believe they are the centre of the universe. This community has a small pipe that extracts water for its inhabitants from the lake. The water that sits in that pitcher comes from somewhere, and I'll let the members contemplate where that may come from. Give us your garbage and over time we'll return it to you.

Over the last few years, the inhabitants of York really got concerned when the local department of health closed their beaches, so they brought in their best hired gun, Mr Crombie, to find a solution. As he studied the problem, he realized that to clean up the beaches, he was going to have to ensure that the watersheds that affected the beaches would not be sources of contamination. And what's that western boundary? The Niagara Escarpment plan area.

The original licence that was granted to the Acton quarry, which we all have a copy of, is conditional that it be rehabilitated according to a plan submitted by Professor Coates of the University of Guelph. That plan included lakes and trees and was described in the press of the day as a recreational beauty spot. Allan Lawrence signed this licence. Now the rehabilitation plan is strangely missing from all places where it should be. Where is the integrity of the businessmen of this country to live up to the promises they've made to the community and to the province and to the government of this province?

Mr Mills said, "Restore to a natural condition." The natural condition does not include garbage. Garbage wasn't there in the first place when they started quarrying, so I don't understand how placing garbage there today would meet this commitment.

It's always been interesting how lawyers can perceive an issue. To me, the escarpment, as most of us know, is a valued piece of land. A quarry is a scar on the landscape, essentially a downgrading of the zoning, if you could look at it from that point of view. For most citizens, rehabilitation of such a property to, say, a conservation area, a lake etc would be an upgrading of the zoning. A lawyer working from a different perspective would argue that landfilling would be an upzoning. One can always make a silk purse out of a sow's ear if one wants to stretch far enough. More individuals would say landfilling is a continual downzoning of the land, not the reverse.

As you know, there was also a claim made here yesterday by RSI that it has an application in to the Consolidated Hearings Board. As far as I know and from what I've found out from the ministry, there is no such application existing at this point. When are we going to have these claims based on fact in this case?

There's a question Mr Chiarelli raised about why municipalities have not excluded landfill as a use in the escarpment components of their jurisdictions. As you know, provincial legislation always overrides the lower government. Until 1962, this was still not a permitted use in the Niagara Escarpment plan area, and it still has to get a plan amendment. A municipality had to bring its plan into line with the NEC policy rather than the other way around. They could determine what they wanted, but the NEC would always override. They didn't have that restriction there, so it could not be applied to those lands.

I also find it interesting that one member of this committee was very concerned about the possibility of the province being sued. On Monday, a clause was added to the amendment that would preclude this option. On Tuesday, that member had changed his tune and was asking individuals whether it was fair. You can't have it both ways.

Another issue was that certain areas of the province, the NEC lands, are wider than they should be. That's a totally different issue from the one here today. If it's a concern, I'd welcome his having an opportunity to put forth a private member's bill to address the issue and that he should have his day in this same room, hopefully. I would be happy to participate in that discussion.

I am pleased to note that yesterday the Environmental Bill of Rights came into force in the province of Ontario. This empowers Ontarians with the tools to ensure that their environment is protected. The legislative steps such as Bill 62 and the Environmental Bill of Rights are the beginning of a more caring, responsible and environmentally aware community.

For the last few days, the vast majority of the presenters here, as with the letters of support received by the clerk, have taken the position that the escarpment shouldn't be used for landfill purposes. Now is the time for the opposition to be counted on. Does the opposition

favour landfill in the escarpment? Plain and simple. I want to know.

If you vote against this bill on technical grounds, then you are indicating that you and your party are in favour of landfill in the Niagara Escarpment. If you are opposed to landfill in that area, then you have the duty to the people of Ontario to bring forward an amendment that you can support that will accomplish what this bill is endeavouring to accomplish. I presume Mr Duignan will be responsible with any amendment you may come forward with.

This may be our only chance this decade to correct the omission that occurred when the Niagara Escarpment legislation was passed. The taxpayers of Ontario sent you here to do a job and not to quibble about technicalities. We as taxpayers want to know where you stand on the landfill on the escarpment, and I expect you will have the courtesy of simply stating, yes or no, is landfill acceptable or not in the Niagara Escarpment plan area? Thank you very much for your time and patience.

Mr Duignan: Thank you, Robert, for coming here this morning and making an excellent presentation, summing up some of the process that's happened over the last couple of days.

The intent of my bill is to prohibit any new, future landfill sites on the Niagara Escarpment. Of course I'm a reasonable person and I'm open to reasonable amendments. I appreciate you coming here today and also making reference to the fact that the Environmental Bill of Rights was proclaimed yesterday and is now law. It gives that extra protection to the citizens of this province that when someone does something irresponsible to the environment the citizen has a right to recourse through law to have that corrected.

Mr Offer: You said you're against landfills on the escarpment, and you made a very eloquent argument. You were here when the city of Niagara Falls made its presentation, and one of its concerns was that they feel this bill may stop the expansion of their site. Are you in favour of Niagara Falls's expansion of the landfill for seven years?

Mr Barlow: I don't think Niagara Falls has asked for an expansion; they've asked for the use of that landfill that's already there to be used for another seven years, not to expand it, necessarily. They have that permit.

Mr Offer: Are you in favour of that? I think we have to share that.

Mr Barlow: What he said is that they expect they need an additional two years over the seven years they've been granted by the board that gave them that certificate. I don't have the technical expertise to know whether that's acceptable or not.

Mr Stockwell: That's a political answer, if I ever heard one.

1450

Mr Offer: But my question—and this is important, because we're talking about the principle here. They have a petition, apparently, before cabinet. There has not been a decision. It may be that the wording of this bill catches them on principle. If that is the case, are you supportive

of reducing the time period that Niagara Falls can use its landfill site?

Mr Barlow: I would press that the cabinet make a decision before this bill is passed. That's only fair. They've asked, and they should be allowed to have that ruling. The other thing is, and I think the lawyer from the Canadian Environmental Law Association said it very clearly, that many of the things we may have to do can be done through other legislation, such as MOE's orders to clean up certain sites. But I expect the cabinet would duly work and in its diligence—and I don't run the political process; you guys are part of that process—would give a quick and adequate answer to the city of Niagara Falls to its request.

Mr Chiarelli: You were here yesterday when St Catharines made its presentation?

Mr Barlow: Yes.

Mr Chiarelli: They proposed an amendment to address their concerns for expansion of the site they already have approval for. Would you support that amendment?

Mr Barlow: I haven't had a chance to read it.

Mr Chiarelli: If any member of this committee supported an amendment to accommodate St Catharines, would you say we would be going against the principle of Bill 62?

Mr Barlow: Bill 62 prevents additional landfilling sites. We have those in there and we have to make sure they're environmentally sound and left in a sound way when they're finished.

Mr Chiarelli: In other words, you think Bill 62 should exclude Niagara Falls's proposed amendment and St Catharines's proposed amendments.

Mr Barlow: I don't think they will get trapped in that as long as you as legislators deal with that fairly and reasonably and you take that into consideration. I don't have the consequences of the legal implications and the political implications of that particular debate. You far better understand this process than I do. I'm just on the fringe of this process. But certainly I would hope you would take into consideration their problems with their current sites. We're talking about new sites.

Mr Chiarelli: Bill 62 basically came before this committee and appeared to be very clean, sort of a yes or no, black-and-white situation. But we on this committee now hear representation from Niagara Falls and St Catharines which indicates that it isn't quite so black and white as it applies to them. That's something we have to wrestle with.

Mr Barlow: These are ongoing sites, not new ones, so I think you will have to deal with those. Because they are there, because there are certain individual problems with them, hopefully you as legislators can come up with some means to deal with those, because they're going to be there for a long time and it needs to be resolved.

As for new sites, no, I'm opposed to any additional ones. Both those communities have indicated they've tried to exclude the Niagara Escarpment plan area and the geology that fits into those in their search for additional

sites. They understand the danger of continuing to site additional sites in that area. I think you as legislators will have to find solutions so you can allow them to finish off their landfilling sites and to make sure those sites are left in an environmentally sound way when they are finished off.

Mr Stockwell: You can see how difficult it is to say you're either in favour of or opposed to Bill 62. I think the point was very ably made by the two previous questioners.

You're opposed to it on the Niagara Escarpment plan area. Another place where it would be terrible to put landfill sites, would you not agree, would be in the ever-diminishing grade A agricultural farm land in southern Ontario. Wouldn't you think that would be a terrible place to put landfill sites?

Mrs Ellen MacKinnon (Lambton): Grade A? Do you think they're eggs or something?

Mr Stockwell: I apologize. The best available farm land in southern Ontario.

Mr Barlow: I have farm land where I live, and I look after it as best I can. We have to protect that too. There are a couple of new sites that have become available. One is that a liner could be put into the SkyDome, and if the odour—

Mr Stockwell: This is not a frivolous question; it's very serious. It's a terrible place, would you not agree, that you should not put landfill sites on prime agricultural farm land in southern Ontario.

Mr Barlow: We don't have much of it and we should protect whatever we can. That's one of the areas that certainly has to be looked at very, very closely, because we have encroached on it from many points of view, from an urban way and that. We've used it up and we haven't got much left.

Mr Stockwell: I agree with you. What about the Rouge Valley, in the eastern part of Metropolitan Toronto? It seems to me that would be a place where you wouldn't want to put any landfill sites, would you not agree?

Mr Barlow: That is protected by the conservation authorities under their acts.

Mr Stockwell: Oak Ridges moraine: That would be another area you just couldn't imagine putting any landfill sites on, could you?

Mr Barlow: That's something you're going to have to spend a lot of time negotiating with all those municipalities, what land is going to be in and out.

Mr Stockwell: You know what? Every one of those municipalities is saying, "We shouldn't have a landfill site," and every one of those members across there voted to give every one of those areas a landfill site, and with no environmental assessment hearings to expand Peel and Keele Valley.

It seems to me I could ask the same question of you and the government members. You've got to stand up and be counted. You should be opposed to not just this area you're speaking of, but the Rouge, Oak Ridges moraine and any prime agricultural land, that there should never

be landfill sites on any of those regions. Would you not agree?

Mr Barlow: As I said, we're going to have to start somewhere. To do an all-encompassing piece of legislation on that—

Mr Duignan: Chris has become an environmentalist all of a sudden.

Mr Barlow: —you know it will take years and years and years.

Mr Stockwell: I couldn't hear you. Noel was chiming in.

Mr Barlow: You know how long it takes to get any process through this Legislature. It's a long time. If we wanted to get into that, I'd be quite happy to participate, but we've got to start it some time, and why can't we use the Niagara Escarpment legislation as the basis we could use to protect other areas of this province?

Mr Stockwell: Do you want to know why it's getting very difficult? All those areas I've mentioned are getting dumps: major league, big-time dumps. They're not going through a full environmental assessment. There are expansions taking place without one second of public debate. I would ask you and the members who came down with you that you petition these members opposite, who are supposedly supporting Bill 62, and ask that they give the same rights to those constituents that you're demanding for yourselves.

Mr Barlow: I'd like to say that I've been involved with Wastewise and some of the other initiatives we tried to take in our area, because we realize we've got to do something about it. Halton has its own landfill site, as you know, and when we looked at some of the sites that were on the Credit River system near Brampton, say, they excluded those sites because of the hydrogeology. It just wasn't suitable for those sites.

I know Mr Offer didn't like the process—

Mr Duignan: But it worked.

Mr Offer: What? It worked?

Mr Barlow: —but there has to be a better way to find how we get through environmental assessments and that whole thing. It's not easy and it's a great ball of wax, and we've got to start unravelling it some time and finding a way to get it solved.

Mr Stockwell: Just call me a cynic when a member of the government comes forward excluding his area and no one else's.

The Chair: Mr Stockwell, thank you. Mr Barlow, thank you for coming today with your presentation.

One last thing before we adjourn: If any member has amendments, it would be useful to get them to the clerk today, but I would recommend no later than 9 o'clock tomorrow morning to be able to distribute them to the members.

Mr Stockwell: I have a question. The member from Halton said we were waiting on a letter or some kind of word from the Ministry of Environment with respect to the support of this piece of legislation. As I understood it, it was left that they helped him draft the legislation, but he gave us an undertaking that he would get some

kind of commitment from the ministry, the last time this was being discussed.

The Chair: I don't remember that. Mr Duignan, do you want to respond to that?

Mr Duignan: I don't remember that, Mr Chair. It's his fertile imagination at work again.

The Chair: Mr Stockwell, so we don't carry on, I don't remember him saying that.

Mr Stockwell: Fine, and I apologize. I then ask, through you, Mr Chair, to the member, who's so committed to this bill, whether he is going to give us some indication, or whether the ministry is going to give us some indication, of whether it supports or doesn't support this piece of legislation. It's very important.

Mr Duignan: I understand the ministry will be here tomorrow morning.

1500

Mr Stockwell: No. I'm not asking for legal and technical answers. I want to know a political answer. Will he get us a position from ministry officials as to whether they support or do not support this legislation?

The Chair: I think he understood the question. Do you want to answer that question, Mr Duignan?

Mr Duignan: I already did, Mr Chair.

Mr Stockwell: What was the answer?

Mr Duignan: The ministry will be here tomorrow morning.

Mr Stockwell: Mr Wildman?

Mr Duignan: The ministry officials will be here tomorrow morning.

Mr Stockwell: And they will answer the question as to whether or not—

Mr Duignan: I suspect you will ask them that question.

Mr Stockwell: I respectfully submit, Mr Chair, that they're not authorized to answer that kind of question. I'm asking, is he going to get the answer or not?

Mr Duignan: I suggest you ask the ministry that question tomorrow morning, as I predict you will.

Mr Stockwell: Mr Chair, this is an absolute and complete copout.

The Chair: Mr Stockwell, you're asking the question, and that's quite clear. He's answering it, and that's clear too.

Mr Stockwell: What?

The Chair: The respective questions and answers are clear.

Mr Stockwell: No. I'm asking the question and his lips are moving. It doesn't necessarily mean there's an answer there.

The Chair: But I'm suggesting that that is the answer. If there is no answer, that's your answer.

Mr Murphy: I know there are some ministry officials here. One of my concerns is that we'll ask them questions tomorrow and they may have to go somewhere else to get the answers. I wouldn't mind putting a few questions on the record now so they can get the questions overnight so

that they'll have them tomorrow when we're here.

The Chair: I'll allow that for their benefit, so they know what kind of questions you might be asking.

Mr Murphy: I asked the question of Noel earlier and I just want the ministry's answer on the distinction between "planning area" and "plan area," whether this encompasses anything within the planning area and what that includes.

—I also would like an opinion on what "environmentally sound manner" means and how it gets determined in this process.

—If your purpose is to stop landfills and not affect other kinds of existing facilities and remediation of existing facilities, blue box programs and domestic waste, whether this achieves that purpose; if the focus is landfills.

—Also, where else we've seen wording like in subsection (4). If that's a lengthy list, I don't need all of them, just a couple of examples.

—Whether you think, if there is an existing application from someone within the escarpment area, that provision could survive a charter challenge.

—Whether subclauses 27(b)(i) through (iv) allow an opportunity for remediation of a site or expansion of an existing site.

These are some of the concerns St Catharines and Niagara Falls have aired to us, so those are some of the questions I'd like to have answered by the ministry tomorrow.

Mr Chiarelli: I have a concern about the relationship between the Niagara Escarpment act and Bill 62, which may provide some area for challenging the legislation by RSI or anybody else. That is, under the Niagara Escarpment act there is a mandated responsibility to create the plan and control development etc. We now have Bill 62, which says that no, to a certain extent you cannot develop or create landfill. I think it may be open to challenge from RSI to say: Which bill has precedence, the plan, with amendment 52, or Bill 62?

My question is a technical one. Do we need to amend the Niagara Escarpment act to say it is subject to Bill 62? Do we need to amend Bill 62 to say, "Notwithstanding the provisions of the Niagara Escarpment act" etc? Right now, I think the bill as drafted, even with the proposed amendment, can be challenged by RSI or anybody else unless there's some sort of coordination of the two pieces of legislation.

I'd like an answer on that tomorrow. Do we need an amendment to the Niagara Escarpment act? Do we need an additional amendment to Bill 62? Do we need a rewording of Bill 62? In my semiprofessional opinion right now—I'm a lawyer but I haven't looked at this thing technically—that is really an area people could look at to challenge the bill, because the two are in conflict.

Mr Offer: Some questions we have—and we may have further tomorrow. I don't think this is viewed as any limitation on our ability to ask questions tomorrow, and I understand that to be the agreement. In terms of "environmentally sound manner," is a regime for that decision

necessary to be drafted, and if not, where is the decision coming from?

The remediation aspect has already been brought forward. I know ministry staff have been here and have heard the submission of Niagara Falls. I don't want to misspeak the position that city has taken, save to say that you've got its presentation and its concerns and we want to know whether there is the possibility that the city of Niagara Falls could be caught within Bill 62 and not get the extension of time it has petitioned cabinet for; also, whether it will have any problem in terms of safety monitorization, as I think it had indicated.

Mr Murphy: Monitoring.

Mr Offer: I like "monitorization."

I would also like to know the position from the ministry on the amendment which we expect will be moved by the member in subsection (4), and that's the "No proceeding," whether without that subsection there is the possibility of a citizen of the province suing the government as a result of this.

My last question is whether the ministry officials will come before this committee with a view to sharing with the members the position by the ministry on this bill, with suggested amendments, in terms of its continuing progress through the Legislature.

The Chair: Mr Murphy, one additional question.

Mr Murphy: I'm wondering whether tomorrow the ministry could come and confirm for me my understanding that, as a general rule, when ministry officials are asked whether a policy is supported by the government, they say they can't answer it and that we have to ask the political officials that. I understand that's the normal course. I'm wondering if you could confirm that for me, just in reference to Noel's comment that we should ask you the government position.

Mr Stockwell: That's going to be very interesting, because we're going to ask the ministry officials what their political opinion is and they're going to tell us to ask Noel, and Noel's going to be whistling. That's all he's going to be doing.

On subsection (4), the question about the legality had that not been included—I assume we are getting that opinion.

The Chair: Yes.

Mr Stockwell: And we're getting that from whom?

The Chair: We have made all the investigatory work about who would do that. We've asked the Attorney General and they said no.

Mr Stockwell: "No" what?

The Chair: That it was not their jurisdiction to give a legal opinion on this matter. We're getting a legal opinion from the Ministry of Environment. We were hoping we might be able to get it today. If it's available, we'll make sure you get it; if not, tomorrow morning. I understand they will have it by tomorrow morning at least.

Mr Stockwell: All right. Following up Mr Offer's question, his will automatically follow my request, because in the amendment they included this catch-all at

the end, which wasn't included in the original motion. Right?

The Chair: Well, you'll get a legal opinion. We can follow it however you want, really. Once you get that opinion, you'll know what to ask.

Mr Stockwell: Maybe this is more a question to you, Mr Chair. Considering that the government said we can't ask the minister to come and respond, could we ask some of the minister's staff, who are his political staff, to respond to the question?

The Chair: I'm not sure the political staff would speak for the minister on this matter, Mr Stockwell.

Mr Stockwell: I put myself in your hands, because we're faced with a very difficult situation. We asked the minister to attend and it was voted down by the committee. So we asked if he could write a letter, and the committee voted that down.

The Chair: That was part of the same motion, yes.

Mr Stockwell: Now we've been told that we can have staff, but we know they can't answer political questions. We asked the politicians and they told us to ask the staff. The last option open so we can get this very important question answered would be to ask the minister's politically appointed staff to come, or the Premier.

Mr Murdoch: We never tried the Premier.

Mr Stockwell: We know where the buck stops, anyway.

The Chair: The political staff is here and I'm convinced they wouldn't speak for the minister.

Mr Stockwell: I'm in your hands. Who should we ask, Mr Chair?

Mr Offer: I think we have the answer.

Mr Stockwell: Tim has an answer?

Mr Murphy: I don't have the answer, but I know the parliamentary assistant is here, who in many circumstances has the authority to speak for the minister. Perhaps we can ask directly through the parliamentary assistant, do the minister and the government support the bill?

The Chair: Parliamentary assistants represent the ministers when they have a bill they are presenting. This is a private bill. If the minister wishes—

Mr Murphy: Rosario, why don't you let the parliamentary assistant speak?

The Chair: If the minister wishes—

Mr Murphy: Mr Chair, don't answer; see if there's an answer forthcoming.

The Chair: I am facilitating.

Mr Murphy: You are not. You're blocking.

The Chair: You all know the answers and everyone understands the questions.

Mr Stockwell: It's really awkward, Mr Chair. We're in your hands. We're asking a simple question: Does the ministry support this?

The Chair: The Chair is facilitating but cannot answer your question by saying—

Mr Murphy: We didn't ask you; we asked through you to the parliamentary assistant.

The Chair: But the answers have come. You don't seem to want to hear the answers.

Mr Stockwell: The answer is what?

The Chair: Mr Duignan, could you answer his or their questions again?

Mr Duignan: I anticipate that one of the questions to be asked of the ministry officials tomorrow is whether the ministry supports this bill. I suspect that the ministry officials who have been here during this whole process have also taken that into consideration and I suspect that the ministry officials will have the appropriate answer tomorrow morning.

Also bear in mind that this is a private member's bill, not a ministry bill, and also the fact that my colleagues support this particular bill, otherwise it wouldn't be here this far into the process.

The Chair: Do the members want to pursue that again?

Mr Stockwell: Not really. It's a waste of time.

Mr Murdoch: Do I make my amendment to the original bill or to the amended bill?

The Chair: You can make the amendments to the original amendment that was here or to the amendments that you assume will be made, the additional ones. You can make amendments to either of the two, however you wish. Please submit these amendments to us today, if you have any; no later than 9 o'clock tomorrow morning.

This committee is adjourned until 10 tomorrow morning.

The committee adjourned at 1513.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Mills, Gordon (Durham East/-Est ND)
- *Murphy, Tim (St George-St David L)
Tilson, David (Dufferin-Peel PC)
Winninger, David (London South/-Sud ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Huget, Bob (Sarnia ND) for Ms Akande
Lessard, Wayne (Windsor-Walkerville ND) for Mr Winninger
MacKinnon, Ellen (Lambton ND) for Mr Malkowski
Murdoch, Bill (Grey-Owen Sound PC) for Mr Tilson
Offer, Steven (Mississauga North/-Nord L) for Mr Curling
Perruzza, Anthony (Downsview ND) for Mr Mills
Stockwell, Chris (Etobicoke West/-Ouest PC) for Mr Harnick

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Assemblée législative de l'Ontario

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Official Report of Debates (Hansard)

Thursday 17 February 1994

Journal des débats (Hansard)

Jeudi 17 février 1994

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Environmental Protection Amendment Act
(Niagara Escarpment), 1993**

**Loi de 1993 modifiant la Loi
sur la protection de l'environnement
(Escarpement du Niagara)**

Chair: Rosario Marchese
Clerk: Donna Bryce

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 17 February 1994

The committee met at 1016 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

ENVIRONMENTAL PROTECTION AMENDMENT ACT
(NIAGARA ESCARPMENT), 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LA PROTECTION DE L'ENVIRONNEMENT
(ESCARPEMENT DU NIAGARA)

Consideration of Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment \ Projet de loi 62, Loi modifiant la Loi sur la protection de l'environnement à l'égard de l'escarpement du Niagara.

The Chair (Mr Rosario Marchese): I ask Mr Wilfred Ng and Brian Nixon to come forward. Mr Wilfred Ng is the director of the approvals branch and Mr Brian Nixon is the director of the environmental planning branch. Welcome. You've obviously been briefed about the questions you will be asked, but I want to have the members ask you directly.

Mr Steven Offer (Mississauga North): Mr Chair, just as a preliminary matter, yesterday we took about a 15- or a 20-minute exercise and put our questions on the record, with ministry staff available. I had anticipated that they were coming here with the initial responses to our questions. Or why did we ask the questions yesterday?

The Chair: Do you have answers to those questions that were asked by the members yesterday?

Mr Brian Nixon: No.

The Chair: But someone in the ministry passed on the questions to you, so you were aware of them. No?

Mr Nixon: I wasn't aware that the committee had set questions for us to answer, Mr Chairman.

Mr Chris Stockwell (Etobicoke West): Okay, big deal. Let's move on. We'll ask the questions again. Could the clerk remind us what our questions were?

The Chair: The clerk has made a note of a number of the questions you've asked, so it will help to refresh your memories. Mr Offer, do you want to begin?

Mr Offer: Yes, and I guess we'll do this in some sort of rotation for a degree of fairness.

Does the Ministry of Environment and Energy, does the government of the province of Ontario, support this piece of legislation?

Mr Wilfred Ng: I understand that this bill is a private member's bill, and as far as I'm concerned, I'm not aware of any position the ministry has taken on this issue. My involvement on this bill is to provide technical advice to the member for the bill on its impact on waste management activities in the Niagara Escarpment Commission area through the minister's office, but we have not addressed the issue of whether we support the bill or not.

Mr Offer: These are very important questions that all the members are going to ask ministry staff. I will just make this comment before I pass to my colleague. The

problem I have with respect to that response—and I understand that that is your response, and I don't question that—is that the first question I asked of Mr Duignan in this committee, at approximately 1:30 last Monday, was whether the ministry supported the legislation. The answer was yes.

Mr Ng: As I said earlier, I'm not aware of any position the ministry has taken on this issue and I have no direct knowledge of what the member based his comment on.

Mr Tim Murphy (St George-St David): One of the questions I have is the distinction between "plan area" and "planning area." I've heard a couple of times here that if it's in the planning area, what's in this private member's bill won't cover it, and also that maybe the planning area is a concept that doesn't apply any more. If a property is just outside the plan area, that green spot on that map over there, if it's just outside that but probably within the area the NEC has the right to comment on, is it affected by the bill, either in the form it was passed in on second reading or in the proposed amendments? Have you seen these proposed amendments?

Mr Nixon: Yes.

Mr Murphy: Would something in that planning area be covered by either the bill or the amendments?

Mr Nixon: Not based on my interpretation of the bill. It refers to the plan area covered by the plan.

Mr Murphy: I want to ask where the RSI application is at this point. Is there an application pending for RSI?

Mr Ng: With respect to the RSI situation, we have been meeting with RSI to discuss the issue of effluent quality for the proposed undertaking. I understand RSI has been discussing with the EA board about when the hearing would be reconvened. I believe the application was submitted quite a number of years ago and there was a ruling by the board, and RSI is in the process of reconvening the issue back with the board.

Mr Murphy: Does the minister have to refer the application to a joint board?

Mr Ng: I'm not too sure whether the minister has on this one.

Mr Murphy: But as far as you're aware, RSI has made applications, at some point between applying and actually having a new joint board reconstituted. They had one hearing once, I gather, which didn't proceed because of a technical reason. Is that your understanding as well?

Mr Ng: That's my understanding.

Mr Murphy: So there is an application that is extant.

Mr Ng: That's my understanding.

Mr Offer: In the event that the bill passes into law, is there, in your opinion, a cause of action by RSI against the province of Ontario?

Mr Ng: I don't think my personal opinion is relevant to this issue.

Mr Offer: I'm sorry. I wasn't asking for any personal opinions at all. I was asking you as a member of the Ministry of Environment—

Mr Murphy: Providing advice to the government.

Mr Ng: You've touched on a very broad policy question, and I'm not too sure whether I can answer that question today. I would like to be able to, but I'm sorry, I can't.

Mr Murphy: Can you come back to us with the answer to that question?

Mr Ng: I don't think I'm the one who would be coming back to answer the question.

Mr Murphy: Is there somebody here who can assist you in that, or someone you can ask who can then ask who can tell us?

Mr Ng: If I had to take a stab at it, I would say it should be the legal people who look at the liability issue.

Mr Murphy: Then can you do me a favour? Can you ask the legal people in the Ministry of Environment that question and undertake to provide us with an answer?

Mr Ng: I can convey the message to legal.

Mr Cameron Jackson (Burlington South): Can I have a supplementary?

The Chair: Do you mind?

Mr Murphy: We'll steal a bit of his time.

Mr Jackson: Are you, as technical advisers to this bill, suggesting that at no point have you asked a question of any member of your staff, when the issue of litigation is a central point in a very small bill? At no point have you had a conversation with staff in the last few months since you've been aware of this bill? Is that what you're suggesting to this committee?

Mr Ng: When we reviewed the implications of the bill, we did look at the liability aspect, but my staff and myself do not have any expertise in this area so we did not—

Mr Jackson: That's not what I asked you. I asked if you've ever had any conversations within your ministry about the issue of litigation. I understand your concern, that you read the bill and saw it dealt with the issue of suing or not being able to sue the government. My question is, have you ever in the last few months had a conversation, at any time, with staff, any staff, regarding the liability issue? I'm just trying to determine how serious an oversight this is for the technical staff who have come prepared today to deal with this bill.

Mr Ng: Like I said, we have identified this to be an issue to be looked into, but we haven't delved too deeply into the issue ourselves. We have identified this to be one issue to be looked at.

Mr Offer: To continue on that point before I move to another area, who is it who provides legal opinion to the ministry on matters such as these? Is it the Ministry of the Attorney General?

Mr Nixon: All the directors of the legal branches in the various ministries work for the Attorney General, so

the advice is provided by the director of the legal branch in each of the ministries to the minister.

Mr Bob Huget (Sarnia): On a point of order, Mr Chair: Do we not have legal opinion? I have a copy of legal opinion, and I wondered what—

The Chair: Yes, legal opinion's distributed on the—

Mr Murphy: That's not the point. We're asking whether there was a view that there was a cause of action and therefore this takes away that cause of action.

Mr Offer: Would the amendment as presently worded stop remediation work on a site that has been closed for any number of years?

Mr Ng: As far as I understand, the amended version does not prohibit that, does not stop remedial work to be carried out a site.

Mr Offer: That has been closed?

Mr Ng: That has been closed, because the regional director can issue an order for remedial activities.

Mr Offer: The regional director?

Mr Ng: The ministry is divided into six regions, with six regional offices. There are a number of responsibilities the regional director can undertake, and it's one of the responsibilities of the regional directors.

Mr Offer: The city of Niagara Falls currently has a matter under petition to the cabinet. The petition is to ask for the life of an existing landfill to be extended in terms of years, from seven more years to nine more years, I believe. In the event that this legislation passes prior to either the cabinet deciding on that petition or the city of Niagara Falls withdrawing that petition, would the city be caught?

Mr Ng: I don't believe the city would be caught, because the amendment indicates that if they've received a certificate of approval now, then the bill would not affect that situation. The certificate of approval was issued to the Mountain Road landfill a number of months ago, so they've got a certificate of approval already. My understanding is they would not get caught.

1030

Mr Murphy: My question is around the phrase "environmentally sound manner" and is twofold. First, it's not clear to me who makes that determination from how this amendment works, and the second is what you understand that to mean. It comes up in a few places, but you'll see it in clauses 27(3)(b)(i) and (iv)—

Mr Ng: I think what that means is that to close off the site, you may have to bring more materials in to provide the proper contour of the site.

Mr Murphy: What you are telling me is what you think it means. Has the ministry taken a look at what this means in any official way? Have you got a legal opinion on what it means, and do you have a legal understanding of how that issue is to be determined?

Mr Ng: I think that issue will be determined by the director of the approvals branch, because it falls within the mandate of the approvals director.

Mr Murphy: Did the ministry help in the drafting of this amendment?

Mr Ng: We looked at the bill initially and its impact on waste management activities and we provided those comments to the minister's office, but we did not draft the bill ourselves.

Mr Murphy: Does the ministry think there are any loopholes in its current legislation that require Bill 62 to be passed?

Mr Ng: Could you—

Mr Stockwell: Ask an easier question.

The Chair: Could you repeat the question, Mr Murphy?

Mr Murphy: Are there any loopholes in the current legislation, as far as the Ministry of Environment is concerned, that require Bill 62 to be passed to achieve what Mr Duignan is trying to achieve?

Mr Ng: My understanding is this bill is a private member's bill.

Mr Murphy: I think we share that understanding.

Mr Ng: I'm coming to a response to your question. Like I said before, the ministry has not taken a position on this bill, so whether or not this bill is because the ministry's got a loophole in existing legislation I don't think is a relevant question.

Mr Murphy: Oh, it's very relevant, but I know you're in a difficult spot and I don't want to belabour the point.

Mr Stockwell: I understand the predicament you're faced with, because you're in a very awkward situation. Let me read through this, not to get you to answer the question about whether the ministry supports or does not support this bill. Let me trace you through the history of this, and maybe you can answer the questions and we can all draw our own conclusions.

I read with some interest the preliminary hearing that was conducted by the joint board between June 1 and June 11, 1992. Have you read that?

Mr Ng: No, I haven't.

Mr Stockwell: This was being heard at the very same time the member was presenting his private member's bill, Bill 62—the original bill, not the amended bill. Reading through that joint board hearing, there were many interesting comments made. If the ministry had real concerns with respect to this particular landfill site, with respect to groundwater, with respect to its feasibility and so on, would these kind of concerns have arisen during that joint board hearings?

Mr Ng: I would say yes.

Mr Stockwell: Reading on, there were many conclusions drawn with respect to this landfill site at that joint board hearing. In fact, many of the same issues were brought forward by many of the same people at that joint board hearing that we've heard this past week, yet in the conclusion of that joint board hearing, ministry officials basically said, "This should move on to the next stage." Would you agree?

Mr Ng: I wasn't that much involved with the initial hearing, but my understanding of the hearing is that it went to the joint board, there was some discussion during the preliminary hearing, and I believe at the end of the

preliminary hearing the board indicated that because of legality, they would not entertain the proposal any further. That is as far as I understand the issues, so I'm in an awkward situation to respond to your question because I wasn't that much involved at that time.

Mr Stockwell: Do you think the present legislation, properly followed, would ferret out a bad application for a landfill site, such as this one if it is in fact deemed to be a bad application? Would the present-day legislation do that?

Mr Ng: I would have to say yes, that's what the process is for.

Mr Stockwell: Does your ministry believe the legislation you've written to ferret out bad applications is good legislation that has worked in the past and should work in the future?

Mr Ng: I don't think I've ever questioned the integrity of the ministry's legislation.

Mr Stockwell: The ministry has gone to great lengths, including the members opposite, of not giving a position on this particular application—great lengths. In fact, the members opposite voted that we not be allowed to ask the minister to appear. The members opposite voted that we not allow the minister to write a letter. They suggested that it wouldn't be worthwhile having the minister's political staff come here. No offense, but we're down to you, and you can't give us a political answer on Bill 62. We're now left in the situation of having to assume what the ministry's position will be, because nobody will tell us what the ministry's position will be.

If you thought the legislation was flawed and this bill was needed, would you as a ministry have brought forward this kind of legislation?

Mr Ng: It all comes back to my initial comment about the position the ministry has taken on this issue. As I've said many times, the ministry has not taken a position on this issue and I don't believe I can answer your question.

Mr Stockwell: Does the ministry consider Bill 62 consistent with existing policies and procedures of the ministry?

Mr Ng: I believe the spirit of Bill 62 is in keeping with the NEC act. Brian would have to help me out with this one.

Mr Stockwell: Let me repeat the question for him. Does the ministry consider Bill 62 to be consistent with the existing policies and procedures of the ministry?

Mr Nixon: That's the same question as you asked before about what the ministry's position is on the bill.

Mr Stockwell: No. I'm just asking you, does the ministry consider Bill 62 to be consistent with the existing policies and procedures of the ministry? That's a very simple question. I'm not asking whether you support or endorse Bill 62. I'm just asking, do you consider Bill 62 to be consistent with your present adopted policies?

Mr Nixon: I couldn't answer that, because I think it harks back to the question about whether there's a position here and whether there's a policy around this sort of bill, which seeks to specifically prohibit a land use.

Mr Stockwell: Mr Duignan suggested that the only reason this application came forward is because of loopholes in the legislation. Do you think this proposal for the Acton quarry is only made because of loopholes in the existing legislation, as stated by the member?

Mr Ng: I think it's the same question about whether the ministry would be taking a position on this issue, and I can't answer that question.

Mr Stockwell: Mr Chair, that's a pretty simple question. I don't think it's political in nature. I'm not asking for their position on Bill 62. The member from Halton suggested the only reason—

Mr Murphy: If I can help clarify, the question is whether you think the process that is established now, of applying for approvals, the joint board process, all of that, is in some way flawed and requires being fixed up by Bill 62.

Mr Ng: In my earlier response, I said I've never questioned the integrity of the process. Like I said, this is a private member's bill and the ministry has not taken a position on this issue.

1040

Mr Murphy: The bottom line is that you're saying the process has integrity, which means there's nothing wrong with it that needs fixing.

Mr Ng: That's not what I'm saying. I'm saying I haven't questioned the integrity of the existing process. This is a private member's bill. Whether it has merit or not, the ministry has not taken a position on this issue.

Mr Stockwell: If Bill 62 is allowed to proceed and becomes law, do you agree that it would halt the proceedings to date with respect to RSI and the ministry?

Mr Ng: Halt the proceedings of what?

Mr Stockwell: Would stop it dead in its tracks, would become a non-starter.

Mr Ng: Based on the wording in the proposed bill, I would say yes.

Mr Stockwell: Is that consistent with your Bill 143 policies; with regard to passing legislation that absolutely and categorically takes an entire region of this province off the table for a landfill site?

Mr Ng: Again you've asked me a very broad policy question. Bill 143 underwent great debate when it was passed. We are here to address the technical aspects of the bill, but you have asked me a very broad policy question which I don't think I am able to answer at this point in time.

Mr Noel Duignan (Halton North): Getting back to the whole question about RSI's application—and not being a lawyer, but however—it's my understanding that it was five days of preliminary hearings, but the hearing itself did not take place before the joint board because there wasn't sufficient information from RSI for the joint board to hear.

Mr Ng: Like I said earlier, I wasn't involved with it at that time, but my understanding was that there was a preliminary hearing held at that time and because of procedural matters, the board indicated it would not further the hearing at that time. That's my understanding.

Mr Duignan: So therefore the joint board did not hear an application from RSI because there wasn't sufficient information for it to go to the board.

Mr Murphy: Noel, that's not what he said.

Mr Stockwell: And that's not true. I read it last night.

Mr Duignan: It is quite true. It did not appear in front of the joint board. In fact, at this point in time, RSI has an application with the NEC to do an amendment based on amendment 52, but it has not been initiated. Is that correct?

Mr Nixon: In checking with the commission, I understand they've had a long-standing application in to amend the plan and they've supplied more information recently to the commission to evaluate the application.

Mr Duignan: But it hasn't been initiated at this point.

Mr Nixon: I'm sorry. I don't know what you mean by initiated.

Mr Duignan: There is no application for a joint board hearing at this point, is there?

Mr Murphy: Yes, there is.

Mr Duignan: Is there? That's what I'm asking.

Mr Stockwell: You've been saying for three days that there isn't. Why are you asking the question?

The Chair: Mr Duignan has the floor to ask questions. Allow him to finish his questions.

Mr Jackson: He needs time to understand it, not to ask it.

Mr Duignan: I quite understand it.

Mr Stockwell: Yeah, sure. Have you read it?

Mr Duignan: Yes, I did.

The Chair: Allow him to finish asking his questions.

Mr Duignan: You've read the proposed amendment from St Catharines. Does the proposed amendment from St Catharines cover all the problems Niagara Falls had in relation to my amendment and my Bill 62?

Mr Ng: My understanding is the city of St Catharines has a number of proposals on the table now. Depending on what option they choose, the bill may or may not affect St Catharines. If they're going to use the existing cells for disposal, the proposed amendment will not catch the city of St Catharines. But if they were to choose another option, which is to go higher, this amendment may catch them. This is my understanding. It all depends on what option they go to.

Mr Offer: Could we be very clear on what amendment we are talking about? I say that in no critical sense, except that every person who came before this committee directed their comments, in the main, to the proposed amendment by Mr Duignan. You are now responding to an amendment. I don't know what amendment you're responding to.

The Chair: You're quite aware of the original amendment Mr Duignan proposed and the draft amendment that he—

Mr Ng: I'm commenting on the copy I received yesterday.

The Chair: The draft?

Mr Ng: I've seen that version this morning, but only about, I would say, 20 minutes ago. I'm in no position to comment on that version, so my comment now is on the one I received yesterday. I recap my opinion about the city of St Catharines: Depending on what options it goes to, it may or may not affect them.

Mr Duignan: You have seen the proposed Liberal amendment to Bill 62. You saw it about 20 minutes ago, but you require more time to review that and see whether that will fit in with the concerns of Niagara Falls.

Mr Offer: I'm having a great deal of difficulty understanding what amendment we are referring to. No amendment has been put forward, certainly by our caucus. We have certain ones we have prepared. They are prepared on a certain assumption, and now I'm hearing that there are different assumptions taking place.

Mr Chair, let me put it to you. I have a real concern with the bill essentially being changed in whole—not in part; wholly changed—the morning of clause-by-clause. I will say very clearly that people came before this committee and spoke in the main on the amendment Mr Duignan had indicated he was going to move, and all of a sudden, we're hearing that we weren't talking about that bill at all. I have to know, first, what amendment we are talking about. Second, does it catch St Catharines, does it catch Niagara Falls? Is there a possibility that it does? Is there a legal ramification for any of those cities, including the RSI application?

I am hearing from ministry officials that some of the statements about applications by RSI, that we had been told on the record were not made—those applications have in fact been made, so all of a sudden I have a different idea about where its particular matter was in terms of the hearing process.

On the bill and the amendment of Mr Duignan, the one you held up, that two-page amendment, it has sub (4) at the bottom. It's the legal liability exclusion. I just want to make sure we're talking about the right amendment. Is that the one?

The Chair: Yes. He's speaking to the draft that we were all debating for the last three days. That's what he was speaking to.

Mr Offer: I'm glad the Chair agrees.

1050

The Chair: They're answering questions based on what we've been dealing with for the last three days, not any new motion has been proposed as of 10 o'clock.

Mr Offer: There has been no motion proposed.

The Chair: That will be proposed or will be advanced this morning.

Mr Offer: There has been no motion proposed.

Will the concerns of the city of St Catharines, and indeed the community groups in St Catharines, and will the concerns by the city of Niagara Falls be met if that motion is passed?

Mr Ng: If the amendment goes through the way it is—I'm basing my comments on this version now—it will not catch Mountain Road, and I believe that's what I said earlier. They've been issued a certificate of approval.

Even though there is an appeal pending before the cabinet, this bill would not have any impact on Mountain Road.

With respect to the city of St Catharines, as I said earlier, there are a number of proposals on the table. Depending on what option they go with, the amendment may or may not have any impact on the city of St Catharines. One of the options is to use existing cells. If that were the case, this amendment would not catch the city of St Catharines. If they were to go higher, the amendment may have an impact on the city of St Catharines.

Mr Offer: Thank you. You've been very clear.

Mr Stockwell: Is the ministry aware of any proposal that's been subject to an environmental assessment and which, during the course of the proceedings, the environmental assessment has been terminated by a private member's bill?

Mr Ng: I'm not aware of any myself.

Mr Stockwell: I didn't hear your answer to the question from the member from Halton about application toward the joint board. Was the answer yes, there is an application to the joint board?

Mr Ng: I need to get some clarification on that myself. I think I'm a little bit confused myself about whether we have an application in or not, but I'll undertake to clarify that aspect.

Mr Stockwell: Is the ministry satisfied that the RSI applications which are presently before the joint board—I think, but according to the member from Halton they're not, and I'd really like a clarification on that; he's been telling us all week they're not, and if they are, that makes a big difference—are heard and determined by the joint board on the respective merits, the interest of the ministry and the citizens of Ontario will be fully protected, in your opinion?

Mr Ng: I'm sure the board would deal with all kinds of issues with the goal of protecting the wellbeing of the general public, but I cannot speculate about what the board may rule on this issue. All I can say is that there is a process in place and all the issues will be dealt with during the process.

Mr Stockwell: Mr Chair, through you, I've seen on private members' bills a number of times—well, not a number of times, but at least since I've been here, which is not long. I recall the Liberal member's bill moving the age of sports lotteries to 18, and the government jumped in with both feet and endorsed that private member's bill. It seems to me it has done this in the past. Could you give me any reason why the government is not prepared to give us an opinion on whether it supports Bill 62? I'd just like to have the rationale.

Mr Ng: I wish I could, but I can't.

Mr Stockwell: I have no further questions.

Mr Offer: You will know that this week the government proclaimed the Environmental Bill of Rights. Is it, in your opinion, possible that the passage of this bill may contravene the principles enunciated in the Environmental Bill of Rights?

Mr Ng: I'm trying to give you an honest response to this one, but since I'm not involved in the whole EBR process, there may be some elements in the EBR process I'm not familiar with.

Mr Offer: Can you give me a best available?

Mr Ng: I'm sorry, I can't answer that question. Unless I'm fully versed in the whole issue, I would not be able to give you an indication one way or the other.

Mrs Elinor Caplan (Oriole): Can I ask a supplementary to that? I think that's really important.

The Chair: Sure. Ms Caplan will ask a question, Mr Stockwell will have a final one, we'll move to the government members to see if they have any questions, and then we will move into clause-by-clause.

Mrs Caplan: I found this discussion very interesting, and I'm having trouble understanding why you're having difficulty on the policy side of the questions. As we have legislation, the Environmental Bill of Rights, that has just been passed, I think it's important that the committee, which is going to be asked in a few minutes to vote on this, know that what we're doing here will not contravene a piece of legislation that has just been proclaimed.

So let me ask it the other way: Can you guarantee the committee that Bill 62 will not contravene the Environmental Bill of Rights or Bill 143, both of which were passed by this government in the last little while?

Mr Ng: As I said, I don't know enough to make a judgement on that issue.

Mrs Caplan: Is there anyone who can come before the committee to give us that information? That's critical for us to know before we vote on a piece of legislation.

The Chair: They can't answer that question.

Mrs Caplan: Can anybody come, Mr Chair?

The Chair: I am not certain at this point.

Mr Stockwell: I have a question about Bill 143 and the legislation surrounding that. It seems to me, as I recall Bill 143, that when searching for a landfill site, the socialist opinion was that you must examine all available sites, right? That was the cornerstone of Bill 143. The second foundation block of Bill 143 was everyone must dispose of their waste within the boundaries of their region, was it not?

Mr Ng: It's one of the principles.

Mr Stockwell: Let me ask you this. Say Halton has to find a landfill site some time in the future and it has to examine all available sites and it must dispose of its waste within its region. Would this bill not in fact go against the legislation adopted on Bill 143? We're excluding a huge area, not just Halton, but eight regions would then have to exclude huge tracts of land within their area, which is exactly what Bill 143 said you couldn't do. Wouldn't you agree to that?

Mr Ng: It would appear that the bill would have that kind of impact. This is why I said the ministry has not taken a position on this issue, because without going through a detailed analysis, we would not be able to come to a position.

Mr Stockwell: Mr Chair, maybe you can assist me on this. I'm not certain that this bill doesn't contravene the

Environmental Bill of Rights that was just proclaimed with fanfare, balloons and confetti. I'm also not so sure it doesn't contravene Bill 143, which was proclaimed with far less confetti, fanfare and balloons. It seems to me, and you'd know this being a good member of the government, that it must contravene Bill 143, because if we adopt Bill 62, eight regional governments can no longer look for the best available site within their region because we've excluded huge tracts of land within those regions.

The Chair: Mr Stockwell—

Mr Stockwell: I'm asking you a question.

The Chair: It's not for me to answer, because—

Mr Stockwell: I'm asking you, how do we get the answer to that question and the question asked by—

The Chair: These are statements you can make, that you are making—

Mr Jackson: A point of order, Mr Chair.

The Chair: Hold on, Mr Jackson. Mr Stockwell, to your point, this is a statement you're making. I cannot answer your question, nor would I. These are statements you can make, that you are making, either in response to the motions that are going to come forward or not.

1100

Mr Jackson: On a point of order, Mr Chairman: My colleague was asking a question and seeking the guidance of the Chair. He specifically uttered the words, "We need your direction to find an answer to these questions." These were not comments, Mr Chairman. This is a point of order—

The Chair: It's not a point of order, but I hear what you're saying. The guidance, he cannot get from this Chair. These answers he cannot get through me.

Mr Jackson: I didn't ask you to answer the question, Mr Chairman. This is not a point of clarification, it's a point of order.

The Chair: It's not a point of order, Mr Jackson.

Mr Jackson: You haven't heard my point of order. If you'd stop arguing with me, Mr Chairman, and allow me to place my point of order according to the rules of this House—

The Chair: Place your point of order then. We can't have a preamble that will last for ever. State your point of order.

Mr Jackson: The point of order is that a member of the committee has asked the Chair for guidance in how to seek an answer to a question. For the Chair to insist that he's making a comment, the Chair is not listening to my colleague.

The Chair: Thank you, Mr Jackson, for your comment. Mr Stockwell asked me to help him, and I made my comment on his statement or question.

Mr Stockwell: Then can I ask you this, just this motion? Could I ask this committee to stand down our clause-by-clause until these two very important questions are answered about whether this bill contravenes two previous pieces of legislation adopted and passed in the Legislature?

The Chair: This is a private member's bill.

Mr Stockwell: I've heard that before.

Mr Murphy: He made a motion, Mr Chair.

The Chair: Is that a motion, Mr Stockwell?

Mr Stockwell: It's a motion moved by my friend Mr Murdoch; I don't have standing at this committee.

The Chair: Mr Murdoch, are you moving that motion?

Mr Bill Murdoch (Grey-Owen Sound): Yes.

The Chair: Debate on that motion, Mr Murdoch?

Mr Murdoch: No. We'd just like to vote.

The Chair: Okay, we'll move to the motion. All in favour of the motion? Opposed? That is defeated.

Mr Stockwell: Mr Chairman, I'd like to know what the vote was.

The Chair: The motion is defeated.

Mr Stockwell: So you voted against it?

The Chair: Yes.

Mr Offer: May I ask the guidance of the Chair in this matter, and maybe of the clerk and legislative counsel?

Interjections.

Mr Anthony Perruzza (Downsview): Mr Chair, I don't think he understands how the system works.

The Chair: It's not helpful.

Mr Murphy: When was the last time Tony was helpful?

Mr Jackson: Well, we can thank him for bringing these people today.

The Chair: Mr Offer, please begin.

Mr Offer: I have a slight concern that has been raised as a result of some of the questions and answers, that notwithstanding the wording of the bill, indeed the passage of the bill may contravene a law of the province of Ontario. I'm not saying "will" but "may." I have a concern when any legislative committee undertakes to pass a bill which is potentially against the law. I would like your guidance about whether that is a problem, for any committee. If the bill exempted itself from the operation of the Environmental Bill of Rights and from Bill 143, of course my concern would be ill-founded; that would be another issue. But my concern is that it doesn't and we might be.

The Chair: Let me state my opinion as I see it. We were discussing a draft amendment that may now appear not to be moved at all. We are now in a situation to discuss motions that are going to be proposed this morning. Given that we're going to be talking about different kinds of motions this morning, I'm not certain whether some of your comments apply. That's my first point.

My second point is, once accepted or once approved by this committee, whatever way, it would then go for third reading. The ministry is then involved with this bill. As I see it, and someone can correct me if I'm wrong, the ministry would then be involved with this bill.

Mr Stockwell: No, they're not. It's a private member's bill.

The Chair: Presumably it would be referred to

committee of the whole for debate if there appeared to be a problem from the ministry point of view, right?

Mr Jackson: In order words, it goes to the House.

The Chair: It would go to the House.

Mr Jackson: If it's called.

The Chair: I wanted to get to these motions that are before us, and the motion that's before us is a Liberal motion.

Mr Offer: No, no, no, Mr Chair. There has been no motion moved by the Liberal Party on any matter. There were certain assumptions in existence when that was drafted—

The Chair: You're quite right. I'm assuming that the motion you made this morning you would be moving this morning. Am I assuming incorrectly?

Mr Offer: My assumptions on all of those things have been changed, based on information—

Mr Stockwell: Can we get direction from the government? Are they moving the amendment we've been debating for three or four days?

The Chair: Mr Duignan, I think it's useful to ask you, what are we moving?

Mr Duignan: Mr Chair, a couple of points. I would have liked the privilege of asking a further question of the ministry staff here. You gave the courtesy to a member, who's not a member of this committee, to ask a question.

The Chair: We can deal with this other matter. If you have another question, that's fine.

Mr Duignan: I want to return to Bill 143, for example. Does Bill 143 exclude the Halton area from a landfill search?

Mr Nixon: I can't recall whether the bill does or if the process is excluded, but it did exclude the Niagara Escarpment, either the process or the bill. I'm not familiar with the details of the bill.

Mr Duignan: And, as I understand it, Halton as well, so I think that answers some of the questions asked across the way.

Mr Stockwell: On a point of order, Mr Chair: The member suggested that that answers a lot of the questions. I just ask for clarification: So that policy with respect to looking for all available sites, that everything's on the table and nothing can be excluded, is not a policy of the government.

Interjections.

Mr Stockwell: I'm looking for clarification.

The Chair: Mr Duignan had the question. That was answered. Mr Stockwell is seeking clarification.

Mr Nixon: I just qualify my answer because I'm not familiar with the details of 143. I understand either the process or the specific requirements of the bill screened out the Niagara Escarpment for site selection purposes.

Mr Stockwell: That then means that when looking for a site in Halton or any of the regions that have any part of the Niagara Escarpment, that has been stated a policy by the government, that they've screened out the Niagara Escarpment.

Mr Nixon: I can't recall specifically.

Mr Stockwell: It's clear as mud, Mr Chair.

The Chair: Mr Duignan, you were the person who had the floor to ask your final question, so please do that and then we'll excuse these other individuals.

Mr Duignan: I just wanted clarification in regard to the Halton region and 143 and the exclusion of the Niagara Escarpment from the landfill search area.

You asked whether I was moving my draft motion—

The Chair: Mr Duignan, before you do that, I thought we should end our questions with the ministry staff. Have we done that?

Thank you very much for attending today to answer our questions.

With respect to whatever motions we've moving today, Mr Duignan, are you moving anything?

Mr Duignan: Mr Chair, the whole purpose of public hearings is to hear public input on a particular piece of legislation, be it a private or be it a public bill. Most amendments to a bill don't happen until clause-by-clause turns around and then we begin to discuss those particular amendments. To facilitate debate on my Bill 62, I circulated a draft of a proposed amendment I would make during the clause-by-clause process to help facilitate debate.

After listening to a number of people making presentation here during the course of the last couple of days, Mr Chair, I will not be moving that draft of the amendment, but I will be moving support for the Liberal motion that I understand has been filed with the committee, if they move it. If not, I will be moving something similar to it. I have a couple of little problems with that particular motion, but we're generally in agreement and support that particular Liberal motion.

Mr Stockwell: How about a week of public hearings?

Mr Murphy: On the new bill.

Mr Offer: Mr Chair, the long and short of all this is that we are now sitting, after four days, and we have not had one public submission on Bill 62 as is now in the mind of the member. The member shakes his head, but Mr Chair, you will know, and everybody who is in the audience who made presentation will know.

POWER, one of the very interested groups, I believe has sent a letter in support of Mr Duignan's motion, the Niagara Escarpment Commission has indicated support of the amendment, and people came before the committee making presentations and directing their minds to the amendment, because the amendment became the bill. There was no other section except the amendment.

Now what we hear is that that amendment, which was the subject matter of the public hearings, is not going to be the subject matter of clause-by-clause. It seems we have been sitting here for four days discussing something which is never going to be in existence.

I do not know what the position of the Niagara Escarpment Commission is, or the position of anybody who came before this hearing, on this bill as is now attempted to be proposed by the member. We are now moving into an area that we don't know what people's opinions,

comments and concerns on the bill are going to be because of this little matter that the member has now—it's a debacle, it's an absolute debacle.

Mr Duignan: On a point of order, Mr Chairman—

The Chair: I will give you the opportunity to respond if that's what we need to do, okay?

Mr Perruzza: Mr Chair, I suggest we send him the Hansards of the committee hearings.

Mr Duignan: The intent of the Liberal motion does not change the intent of my bill whatsoever. What we're doing is addressing some of the concerns raised by the city of St Catharines and possibly by the city of Niagara Falls. This does not change one little bit the intent of my bill. The purpose of these public hearings was to discuss Bill 62. As I said, my draft amendment helped to facilitate that, to address some of the concerns raised by some of the individuals. The intent of this amendment does not change my bill. In fact, it's very similar to my draft amendment, clauses (a) and (b) of this particular motion.

There are four other private member's bills up for discussion, some this week, some in a couple of weeks' time. For example, there's another private member's bill being discussed this week to which there's somewhere between 23 and 27 amendments.

So this is not unique. This is a private member's bill, not a public bill, and in fact I do not know of any public bill going before committee that's passed committee without some substantial amendments to it, be it a Liberal, Tory or NDP bill.

Mr Huget: Mr Chairman, could I request a 20-minute recess? Perhaps in that time the government member may discuss what his intentions are and clarify some of the confusion with the opposition members, and then we'll resume at 11:35.

The Chair: We'll recess for approximately five minutes. Is that sufficient, do you think?

Mr Stockwell: No, we need more than five minutes.

The Chair: We'll recess until 11:30.

The committee recessed from 1113 to 1135.

The Chair: I call the meeting to order. Mr Duignan.

Mr Duignan: I understand we have an agreement that we will adjourn till 2 o'clock.

The Chair: Very well. This committee adjourns until 2 this afternoon.

The committee recessed from 1135 to 1407.

The Chair: I call the meeting to order. We're ready to proceed with the clause-by-clause.

Mr Stockwell: Of what?

The Chair: Amendment of Bill 62, this bill.

Mr Murphy: Why don't we ask the author of the bill to move his amendment?

The Chair: What we have, in the way the clerk has helped us to organize this, is a Liberal motion. The clerk can actually comment on this, if you want.

Mr Murphy: Let Noel move his amendment.

The Chair: Let's do that. Mr Duignan, move your motion.

Mr Duignan: I move that section 1 of the bill be struck out and the following substituted:

"1 (1) Section 27 of the Environmental Protection Act is amended by adding the following subsections:

"Niagara Escarpment plan area

"27 (2) Despite subsection (1), no person shall use, operate, establish, alter, enlarge or extend a waste disposal site in the Niagara Escarpment plan area as set out in the Niagara Escarpment plan, unless the director has issued a certificate of approval or a provisional certificate of approval before this subsection comes into force.

"Exceptions

"(3) Subsection (2) does not apply with respect to,

"(a) a transfer station or recycling facility, including a composting site, which receives waste only from the local municipality in which it is located; or

"(b) in the case of a site approved before this subsection comes into force, a proposed use, operation, alteration, enlargement or extension of a waste disposal site which will not result in a greater area at a landfill site being covered with waste than permitted under the existing approval.

"No proceeding

"(4) No proceeding directly or indirectly based upon the prohibition in subsection (2) may be brought against the crown in right of Ontario, the government of Ontario, any member of the executive council or any employee of the crown or government."

The Chair: Debate?

Mr Stockwell: Debate on the amendment itself? We'll wait until clause-by-clause.

The Chair: We are on clause-by-clause now.

Mr Stockwell: Oh, of course, one clause.

Mr Offer: It's just "clause," not "clause-by-clause."

Mr Stockwell: Clause 3(b) says "in the case of a site approved before this subsection comes into force, a proposed use, operation, alteration, enlargement or extension of a waste disposal site which will not result in a greater area at a landfill site being covered with waste than permitted under the existing approval." Does that therefore mean they can have a lift?

Mr Duignan: Yes.

Mr Stockwell: And that lift then means there'll be more garbage, and this is to protect—is it Niagara Falls or St Catharines?

Mr Duignan: Both, I believe.

Mr Stockwell: Are you trying to stop further landfilling or are you just allowing a lift for covering purposes?

Mr Murphy: That's going to be a tough one to get the answer to.

Mr Murphy: These are ministry people. Perhaps we can invite them to join and act as advisers to us, if it's acceptable.

Mr Stockwell: Noel, does the ministry support this?

Mr Duignan: I understand you were asking the exact same question at the other private member's bill down

the hallway. Now, Chris, if you could repeat the question.

Mr Stockwell: I understand that you are wording it in this fashion so as to allow a lift on Niagara Falls or St Catharines. Would that lift include more garbage, or is it simply for covering and remedial purposes?

Mr Duignan: It does not increase the footprint of the existing landfill site.

Mr Stockwell: I know that. I understand what a lift is. A lift makes a dump higher; it doesn't expand it.

Mr Duignan: That's quite correct.

Mr Stockwell: But does the lift include, for St Catharines and Niagara Falls, more garbage?

Mr Duignan: It could. In this case it doesn't, but it could.

Mr Stockwell: In this case it doesn't, but it could.

Mr Murdoch: What the hell does that mean?

Mr Stockwell: "Not necessarily," I heard in the back: not necessarily conscription.

Mr Offer: If I could ask a question on this amendment, there are a few changes between the amendment you've just proposed and the original amendment you brought forward. The phrase "environmentally sound manner" is not in the motion you have just made. Is there a reason? Why have we taken out the phrase "environmentally sound manner?"

Ms Margaret H. Harrington (Niagara Falls): Because it was what you wanted.

Mr Murphy: No, we just wanted to know what it meant.

Mr Offer: We just ask the questions.

Mr Duignan: We understand that the legal people in the ministry indicated that it wasn't really necessary.

Mr Offer: May I ask one further question? This morning there was some discussion over the legal opinion provided by Mr Jack Johnson of the Ministry of the Attorney General on this bill. I took from the discussion that because of the legal opinion by the Ministry of Environment, a sub (4) "no proceeding" section was not necessary. Now the "no proceeding" section has found its way back in as a necessity. I remember the initial question. Does the passage of this bill possibly allow a citizen of the province of Ontario to sue the government?

Mr Duignan: Look at the bottom of page 2 of the same legal opinion, the last paragraph, where it states: "On the strength of the law as reflected in this case, Bill 62 cannot be classified as an expropriation, and therefore amendment subclause (4) is unnecessary. It may nevertheless be prudent to retain subclause (4), subject to any advice which legislative counsel may wish to offer as to the implications for other legislation." We're just proceeding on the advice of legal counsel.

Mr Offer: I'm just trying to figure that one out. I've got a person in the Ministry of the Attorney General, a well-respected counsel for many years, who says an amendment sub (4) is unnecessary, but we have sub (4). How come?

Mr Duignan: All I can say is that we're acting on the advice of legal counsel of the ministry.

Mr Offer: Then I guess it follows that there is the possibility that the passage of Bill 62 would permit a citizen of the province of Ontario to sue the government of Ontario as a result of Bill 62.

Mr Duignan: That's a possibility in any legislation.

Mr Offer: There are probably other questions.

The Chair: People are asking, before debate, for clarification. Is that it? Okay.

Mr Stockwell: Did you have any opportunity during the break to discuss the question about the Environmental Bill of Rights, whether it contravenes the Environmental Bill of Rights?

Mr Duignan: We did discuss it, and we believe there is no contravention of the Environmental Bill of Rights.

Mr Stockwell: I assume you discussed it internally rather than actually seeking a legal opinion.

Mr Duignan: We discussed it internally, which means we talked among ourselves and among a number of people within the ministry.

1420

Mr Stockwell: Let me be a little more direct. Did you consult any lawyers with respect to whether it would contravene the just-proclaimed Environmental Bill of Rights?

Mr Huget: Did you?

Mr Stockwell: No, I don't have any lawyers. You guys have all the lawyers.

Mr Duignan: The ministry's lawyers have been dealing with this bill for a couple of days, and at no point in any of the discussion around this bill did any lawyer indicate there was any problem with this bill contravening the Environmental Bill of Rights.

Mr Stockwell: I understood that before the break, Noel. All I'm really looking for is, did anyone bring up the issue? Did you bring up the issue?

Mr Duignan: As I said, I talked internally to our own people.

Mr Stockwell: Your own solicitors?

Mr Duignan: I don't have a solicitor. I can't afford to have one.

Mr Stockwell: The ministry solicitors?

Mr Duignan: No. We didn't talk to the ministry solicitors; we talked to some ministry officials.

Mr Stockwell: So it was staff?

Mr Duignan: Yes.

Mr Offer: I have one thing, again on sub (4). We've been provided with a letter dated December 19, 1990. It is to a law firm that acts for RSI. It's a very short letter, but we should know that it is a letter signed by the Premier of the province. It reads:

"Thank you for your letter dated November 6 and attachments. Please accept my apologies for the delay in replying to it.

"I can assure you that our government will respect the environmental assessment process, a process which is independent of our actions and assures the parties concerned a fair public hearing.

"With regard to the view held and/or expressed by Mr Noel Duignan, I can only say that he is an elected member of the provincial Parliament with the right to judge what is in the best interests of his constituents.

"Thank you for bringing these concerns to my attention.

"Yours sincerely, Bob Rae."

What brings a question to my mind is the phrase, "I can assure you that our government will respect the environmental assessment process, a process which is independent of our actions and assures the parties concerned a fair public hearing." My concern almost goes right back to the first question. The Premier of the province is saying he stands for a fair hearing under the environmental assessment process and that the parties will receive a fair public hearing. My question is whether there has been some discussion about whether the Premier has changed his position on account of the potential passage of Bill 62, which I understand will stop any hearing.

Mr Duignan: That letter was written before I introduced my private member's bill. Politics change and people make different decisions. I guess you'll have to ask the Premier. This is my private member's bill.

Mr Offer: I understand that, and I appreciate and know full well, as all members here know full well, how private members' bills proceed. I must say I am concerned for the many people who came before the committee, who came with a certain expectation that this bill would be supported by the government and passed into law. They came with that expectation. They didn't come with an expectation of: "I've got a free week. Let's chat before a committee." They came with a certain expectation that the government would support this particular legislation, so that some of the things they have said in the past and some of the things they have gone through would not proceed.

This letter, just from a very quick reading, paints a different picture. I think we owe it to the people who took their time to come before the committee as to whether this bill is supported. I'm no longer asking for the support of the Ministry of Environment or the minister. I'm asking, does the Premier of the province support the bill? We have a letter here which clearly indicates that he is in support of the environmental assessment process.

Mr Duignan: So are we. I'd like to point out that I've got the support of my colleagues; otherwise my private member's bill would not be going through this process here today. It is strange that you ask this particular question, and it's strange that at the committee down the way you're asking exactly the same question of a colleague of mine who's also introducing a private member's bill.

The Premier is very well aware of my private member's bill. The Premier is very well aware of the feelings of my constituents on this particular matter, and constituents from across the province. He's received many letters, if not thousands of letters, on this particular subject urging the Premier to support my bill. The Premier, like

any member of the Legislature, when it comes to a vote for third reading, has a vote.

Mr Stockwell: We all received letters. I can therefore only assume that the Premier writes responses that have no basis in fact or truth. That seems to be a rather condemning analogy by the member from Halton.

Mr Duignan: That's your interpretation.

Mr Stockwell: Well, you're suggesting we received lots of letters and that you responded accordingly. The Premier, the head of the NDP, the leader of the government, would not, I would hope, write letters that are not based on fact and truth and beliefs. This seems very clear. It's kind of difficult, I suppose, when you're trying to do business in a province, where you write the head of a government that's in charge of the province asking for his interpretation on the environmental assessment process and how it affects you as a business person in this province, and you get assurances that you are guaranteed—I don't think there's any debate—"the environmental assessment process...independent of our actions...assures the parties concerned a fair public hearing." Some three short years later, all of that goes out the window, because the Premier can write letters saying whatever the heck he wants.

I ask through you, Mr Chair, to the member from Halton, in terms of clause 3(a), would the quarry site you were trying to close down qualify? If they applied as "a transfer station or recycling facility, including a composting site," would that be allowed on that site?

Mr Duignan: As you are well aware, my amendment would permit a transfer station or a composting station in the quarry, but only from the local community. For example, it would be just from the municipality of Halton Hills.

Mr Stockwell: So they could open up in that quarry a transfer station, recycling facility or composting site?

Mr Duignan: But it would have to go through the amendment 52 process.

Mr Stockwell: And if they did that—

Mr Duignan: If it went through that particular process.

Mr Stockwell: They'd be allowed to operate one of those sites there.

Mr Duignan: That's what my amendment reads: "A transfer station or recycling facility, including a composting site, which receives waste only from the local municipality in which it is located."

Mr Stockwell: So it can only receive it from Halton.

Mr Duignan: That's right. That's from the lower-tier municipality, which would be Halton Hills. It wouldn't be Halton region; it would be just Halton Hills.

1430

Mrs Caplan: The concern I have is that the people who have come before the committee and have been bringing their concerns to the committee have had their expectations raised. Because this private member's bill has been supported by a majority of the Legislature, certainly by the government caucus, there's some expectation that it's going to be called for third reading,

provided it passes the committee here, and that this bill will become law. We have a letter from the Premier which contradicts that expectation of the people who have come here before the committee.

I think it's very important for the member to tell us what assurances he has had from the government House leader as to whether this bill will ever be called for third reading or whether this is in fact a charade. If it's a charade, given how people feel about politicians—they don't like any of us very much; the public is very cynical about the way they're treated—if this hearing is a charade, I'd like to know about it. I'd like to ask the member whether he has had any commitment from the government House leader to place this bill for third reading on the government agenda should it pass this committee.

Mr Duignan: It's strange, the Liberals playing these games. You're saying exactly what they're saying down in the other committee as well, just playing political games. I can assure you, if this bill passes this committee, I will as a private member be asking my House leader to place this and bring it forward for third reading. This is not a charade. Do you think I would bring it here for a charade, to get the expectations of my constituents up for a charade? You may play that type of politics, but I certainly don't play that type of politics.

Mrs Caplan: Having served in cabinet, knowing how the Legislature works—I've been here since 1985—a private member doesn't come forward with a bill to committee without some expectation from his House leader that it's going to be accepted and placed on the government's agenda. That's the way the place works.

Mr Duignan: Do you think my House leader would have let it come to public hearings without some expectation of it going to third reading?

Mrs Caplan: So you are telling us today that your House leader has committed to putting this on the agenda for third reading. I just want to be clear that I understand this.

Mr Perruzza: On a point of order, Mr Chairman: This is where I'm getting a little fuzzy and I'm no longer clear. When it comes to the House, I'm going to support it. I suspect there are some people here who are going to support it. You may support it, some of your colleagues may support it, and we may pass this. That's what's going to happen, so I don't understand where this is all leading to and where you're trying to go with it. Please make the point.

The Chair: Mr Perruzza, thank you for the comment. It's not a point of order. I direct the members to refer themselves continually to the amendment before us as best they can. Do you have another question?

Mrs Caplan: I'd like an answer, to know from the member whether his House leader has agreed. What I've heard him say is that he has the agreement of the House leader to place this for third reading if it passes this committee. I have to say, Mr Chairman, given the letter from the Premier which says he supports and respects the environmental assessment process, we have a contradiction that is of great concern to this committee. In fact,

I'm concerned that in light of the letter from the Premier, the member—I don't want to use the term "mislead," but perhaps he's been misled by his House leader. I would be prepared to say today that there's no way this bill will ever appear for third reading. In fact, I'm prepared to help it pass this committee to see—

Mr Huget: You're prepared to see to it that it never does.

Mrs Caplan: No, absolutely not. I'm going to support it here to see if it is called by the government.

Mr Duignan: I'm very glad of your support for my bill, and I look forward to your support at third reading.

Mrs Caplan: It will never see the light of day.

Mr Murphy: I have a question on clause (3)(a).

Mrs Caplan: It's a sham, a charade. Shame on you.

Interjections.

The Chair: Mr Murphy, please get into your point, otherwise you allow and permit this.

Mr Murphy: My question relates to the issue of receiving waste only from the local municipality. Bill 7 envisages the possibility of transfer of waste from a local to an upper-tier municipality. There are many smaller municipalities that pool those kinds of things, and I'm wondering whether that wording creates a problem for those kinds of places.

Mr Duignan: The intention of my amendment was to keep it to a small transfer station, a small recycling facility, including a small compost facility, and limited to the particular local municipality in which it exists. That was the intention of my amendment, not to engage in region-wide or area-wide facilities.

Mr Murphy: I understand that, but your bill might then contradict the Bill 7 process. For example, if there's a transfer station, recycling facility, even a composting site, within the plan area now operated by more than one local municipality, they can't do anything with it at all, according to this wording, because it receives waste from other than a local municipality, receives waste from two or three or four. I just see that being a problem in many places up and down the escarpment. That's all.

Mr Duignan: This, as you know, just confines it to the plan area. It doesn't necessarily talk about—it's a very small area.

Mr Murphy: Absolutely, but there are lots of local municipalities in the plan area.

Mr Duignan: As I say, this confines itself to the plan area. Bill 7 can deal with the rest of the municipalities, but this is particular to the plan area and it's my intention to keep it small-scale to that local municipality in which it's located.

Mr Murphy: I can see that and understand that. I'm just trying to work out in my mind what this does. If Halton Hills and a couple of other municipalities in the area have a transfer station they use in common, or a composting site or some recycling facility, and that is located within the plan area, this prohibits any change whatsoever to that existing transfer station, recycling facility, composting site, if those municipalities decide it would be a smart thing to permit that to happen, because

it's receiving waste from other than a local municipality. First, is that right?

Mr Stockwell: Yes, that's right.

Mr Duignan: If the local municipality has an existing composting facility in operation, for example, it wouldn't affect. It would affect if they wanted to have a new region-wide composting facility situated in the plan area.

Mr Murphy: Yes, or if there was an existing shared facility, it would prevent—

Mr Duignan: If it's already there, already up and running, it wouldn't affect it.

Mr Murphy: No, but it would prevent any alteration, enlargement, extension, wouldn't it?

Mr Duignan: No.

Mr Murphy: I think it would.

Mr Duignan: I believe it does not apply to a composting facility.

Mr Murphy: No, that's not what it says. The way it works, you've got your subsection (2) which says you can't do anything at all with a waste disposal site. "Waste disposal site" includes, by definition, transfer stations, recycling facilities, composting sites.

What then sub (3) says is that for those three types of waste disposal sites, you can operate, alter, enlarge or extend those three types of waste disposal sites provided they receive waste only from a local municipality. In fact, by the wording of subsection (2), they can't even operate a facility in the plan area if it accepts garbage from more than one local municipality.

Mr Duignan: The whole purpose of this amendment is to keep it small-scale within the local municipality it comes from.

Mr Murphy: This is not to criticize your purpose. It may be that this needs an amendment for those kinds of facilities.

Mr Stockwell: It's also the economies of scale. Lots of them can't run their own, so they get together and run collectively.

Mr Murphy: Absolutely. I think most people would say these types of facilities aren't landfills. As I think you have said quite clearly, this is really meant to focus on landfills: "We don't want landfills in our area."

1440

Mr Duignan: I would point out that this subsection is consistent with amendment 52. It's not different from amendment 52.

Mr Murphy: This is a statutory prohibition.

Mr Duignan: It permits a small-scale transfer station, recycling facility and composting site to the local municipality.

Mr Murphy: Does anybody know whether, within the entire plan area, there is one of these three—transfer station, recycling facility, composting site—which receives waste from more than one municipality? Is there one of those in the plan area now?

Mr Stockwell: There's got to be a transfer station somewhere. That's just where they dump the garbage so you can get the other trucks to take it to the dump.

Mr Duignan: My region is Halton.

Mr Murphy: Halton, you don't think so, but the plan area covers a lot of municipalities.

Mr Stockwell: You've got Niagara Falls, St Catharines. You've got some major cities there. You probably have transfer stations, I would assume.

Mr Duignan: But if they already exist, this doesn't affect them.

Mr Murphy: No. You're wrong on that. If they take it from more than one local municipality, this disallows them from even operating the thing. Look at it: "Despite subsection (1), no person shall...operate...a waste disposal site," except if it's "a transfer station or a recycling facility...which receives waste only from a local municipality in which it is located."

Mr Duignan: "Or in the case of a site approved before this subsection comes into force."

Mr Murphy: But you can't expand it, you can't have a greater area. This really is a landfill site. Clause (b) is a landfill site clause. That's what it says.

Mr Duignan: All I can say is that the intent of my amendment is to limit it to small-scale within the municipality. I understand the point you're talking about: If a municipality isn't big enough and needs to combine with other municipalities—

Mr Murphy: I think there's a problem in the wording of this.

Mr Duignan: Halton does it on a region-wide basis, but it's not situated on the plan area. They can do it outside of the plan area but not in the plan area. The plan area's a very small percentage of land.

Mr Murdoch: Noel, I just want to tell you, Owen Sound has a dump in Sydenham township which also takes St Vincent's, another municipality, because St Vincent's landfill site has been closed. Is this going to stop them? Owen Sound dumps its garbage in Sydenham township, and they have transfer stations on the escarpment.

Mr Stockwell: This would stop them.

Mr Duignan: No, if it's already existing.

Mr Murdoch: But it's not their municipality. It's not in the local. There are four municipalities.

Mr Stockwell: Hey, Tim, did you hear that? He's got a transfer station that takes four municipalities on the escarpment.

Mr Murdoch: The transfer station's on the escarpment. The garbage dump isn't.

Mr Offer: Well, guess what, buddy? Not any more.

Mr Murdoch: It won't hurt us, but poor old St Vincent, which has been closed by the government—

Mr Duignan: Under sub (b) it's "in the case of a site approved before the subsection comes into force," so if it's already existing, you're okay. Any new site would have a problem, because it would be limited to the local municipality within the plan area.

Mr Murdoch: The dumps are using the quarry, four municipalities, and we have the escarpment all around there.

Mr Duignan: But if it's already existing—

Mr Murdoch: You're saying they can't do any more, but they're still going to use the same dump, and this is going to limit them if they have to set up another spot. Now they won't even be able to apply for one.

Mr Murphy: It depends on what their existing certificate lets them do.

Mr Offer: If you read the exception—I'm thinking about a recycling facility, and I'm thinking about one in my area. If there is a recycling facility which serves more than one municipality, under this bill it cannot be altered or enlarged or extended. You cannot do anything to that recycling facility.

Mr Duignan: Except—

Mr Offer: Except nothing. The only exception to a recycling or waste site or transfer station is the issue about whether it is servicing one municipality or more than one municipality. If it only services one municipality, then it might fall under some exception. If it happens to serve two or more, then it's done. No? Why not?

Mr Duignan: Sub 3(a) is talking about new transfer stations or new recycling facilities etc. If you already have an existing transfer station or recycling facility or whatever, clause (b) comes into effect: "in the case of a site approved before the subsection comes into force."

Mr Offer: I disagree with you, I'm sorry. A certificate will say, "This is what this recycling facility can do; this is when it can do it," and that's what it is. If it serves more than two municipalities and these municipalities want to extend their recycling program, want to do more recycling, they can't use this facility because their certificate has frozen them for all time. You cannot expand recycling programs under this bill.

Mr Stockwell: You may not enlarge or extend.

Mr Duignan: You cannot enlarge the footprint of an existing site.

Mr Murphy: That's a landfill.

Mr Offer: No, no. I'm talking about a recycling facility, and that is exception 3(a); it falls under the exception that it serves but one municipality. If it serves more than one municipality and wants to recycle goods so that waste is reduced to 5%, wants to recycle 95% of all waste, and it needs to have its certificate amended, it can't get it, the bill stops that. That's my reading of it. I just don't know. Are we freezing for all time the recycling capability of municipalities located within the Niagara Escarpment? It's sort of an anomaly.

Mr Duignan: The plan area. The plan area in any municipality is a very small land mass.

Mr Offer: Am I wrong here?

Mr Murphy: It is the plan area, but that's a lot of land.

Mr Murdoch: Just to carry on, you're saying it's a small area, but no it isn't, in our area. We have a dump site in the township of Sydenham. It's not on the escarpment, but four municipalities use it, and there's all kinds of Niagara Escarpment area around there. That's why I went on about the rural part of it. That means they won't be able to have a transfer site anywhere else other than

the ones they've got now. Is that what this means?

Mr Duignan: A point of clarification: Are you saying the existing site is not in the plan area?

Mr Murdoch: The dump isn't, but they have transfer stations that are.

Mr Duignan: Well, if the transfer station is an existing site, you're okay, it's covered.

Mr Murdoch: But what if they want to change? You've got to realize that you're making a bill here, and I know it's for your use where you live, but unfortunately this bill is covering all over Ontario. That's where you run into problems, and that's what I'm trying to tell you.

In our area, it's a large portion of my municipality. The dump is not very far away from the plan area, but it isn't on it, so that's fine. But where they pick up the garbage and stuff, it is. There is garbage on—

Mr Duignan: It's an existing site, right?

Mr Murdoch: Some of them are, but they may want to alter it or change it or enlarge it or move it. Right now, one of the spots is at the municipality, and it's going to want to change that and now you're saying it can't, with a bill that's never gone out to the public in our area. Here you are going to change it, just like that.

Mr Duignan: That's not our reading on the issue.

Mr Murdoch: If they want to change it, it is. You've said that.

Mr Stockwell: Ask that question: What if they wanted to move the transfer site?

Mr Duignan: Move it to where?

Mr Murdoch: Down the road.

Mr Duignan: On the plan area?

Mr Murdoch: It's on the plan area now. What if they wanted to move it?

Mr Duignan: If you wanted to move it, it would be a new site, and unless it was just dealing with waste from the local municipality, it wouldn't be allowed.

Mr Stockwell: So you couldn't move it.

Mr Murdoch: But four municipalities use it. You've got to realize that a lot of municipalities share dumps now. This is your government's way of—

Mr Duignan: It's the same under amendment 52. It's no different from amendment 52 that exists right now.

Mr Stockwell: Where is amendment 52?

Mr Duignan: It's part of the Niagara Escarpment plan.

Mr Murdoch: They can do it under amendment 52. They'll have to go through the plan—

The Chair: When you all jump in and out, it's hard for the fellows at the back to record you.

Mr Stockwell: They keep referring back to 52. Where is the wording? They say it's exactly the same. Oh gosh, you're a crackerjack, I'll tell you. Give me the wording on 52.

Mr Perruzza: Chris, what does your sheet say as a possible answer to the question?

Mr Stockwell: My possible answers? I don't have them.

The Chair: It's not helpful to have this cross-dialogue.

Mr Duignan: Under amendment 52, "Part 1.5, Escarpment Rural Area, Permitted Uses...is amended by adding the following new use: Small-scale recycling depots for paper, glass, cans etc, serving the local community."

What we haven't used is the word "small-scale," but it's the same as existing in amendment 52. In part 1.5, the escarpment rural area, or part 1.4, the escarpment protection area, it's the same clause repeated for the two areas.

Mr Stockwell: Read it for me again, please.

Mr Duignan: "Small-scale recycling depots for paper, glass and cans etc, serving the local community."

Mr Stockwell: But that's not a transfer station. That's a little recycling depot where you come and bring your cans and stuff; like at the cottage, you take it to the depot there. That's not a transfer station.

Mr Duignan: If the committee permits, we will get back to the committee in about 10 minutes on the whole question around whether this particular bill or amendment will have any impact on existing transfer stations.

The Chair: Okay. This committee will recess for approximately 10 minutes.

The committee recessed from 1453 to 1504.

The Chair: I call the meeting to order. We're continuing with questions, comments, debate. Mr Duignan, you have an answer?

Mr Duignan: While we're waiting for the response, maybe we'll stand down that particular question and move on to the next question.

Mr Murphy: It strikes me that Mr Duignan has moved this bill at least in part to prevent future landfills being located on the escarpment, but this letter with respect to the environmental assessment process from the Premier presents a problem, because obviously there is an existing application relating to RSI. It seems to me that there is a way to accommodate the desire in the future to prevent landfills from being located on the escarpment plan and yet accommodate what the Premier said and the Premier's commitment: to exempt from his bill that landfill process to which this letter refers, which is the RSI application.

The question I have for Mr Duignan is whether he's prepared to achieve that compromise to maybe help him get his bill to proceed by amending his own bill to exempt the RSI application so that his Premier won't be embarrassed. I'm just wondering if he's considering doing that.

Mr Duignan: I wouldn't worry about my Premier being embarrassed about this particular section. And no, I won't be entertaining such an amendment.

Mr Stockwell: Just a thought on this letter from the Premier. It would seem to me that the independent private group that was working on the Acton site, having received the opinion from Jack Johnson—would this letter give rise to an opinion that may change from Mr Johnson?

I'll tell you why. It would seem to me, if I were operating a business in the province of Ontario and I had spent millions of dollars preparing a site, for any project of any kind in the province, and had written to the Premier seeking his opinion on whether I could be comfortable in proceeding to spend millions more dollars with the thought that I would get a fair and impartial hearing, and having received a letter from the Premier saying, "Of course you will receive a fair and impartial hearing, independent of our actions," and having spent the money—and clearly the member from Halton is on the record over a significant period of time on a number of occasions saying, "This bill is designed to close the opportunity for the Acton site."

It would seem to me there's got to be something actionable in receiving a letter saying, "Yes, proceed in good conscience. Go ahead. I know you've spent millions. Spend millions more, because in this province with this government you're going to get a fair hearing," and then three years later, reading Bill 62, designed by the member from Halton to—he says without any concern at all, "I'm doing this to shut this project down." If Mr Johnson knew that, would his opinion change?

Mr Duignan: You can talk to Mr Johnson, but I don't believe it would. Let me make a couple of references. What about the deal about the Toronto airport, for example, or the deal about the helicopters? What about those deals?

Mr Stockwell: They're paying for those deals. They're paying big-time for those deals. It's called compensation. Good analogy, Noel.

Mr Duignan: We'll wait and see that one. I also bear in mind a newspaper article dated April 3, 1990, prior to the election, which quotes Mr Rae. "'You can't have garbage dumps in the middle of the biosphere,' Mr Rae told about 20 members of Protect Our Water and Environmental Resources. 'That is a direct threat to the integrity of the escarpment. It is going to blow up in his face if he doesn't take the tough steps needed in this situation.'"

1510

Mr Stockwell: With all due respect, I don't want to get into a long-drawn-out debate about what Mr Rae said about garbage dumps around this province.

Mr Huget: It has no relevance.

Mr Stockwell: I think it does have relevance.

Interjection.

Mr Stockwell: Mr Chair, you're saying we're off topic to some degree, but when Mr Offer asked if the ministry staff supported it, the first thing I asked for was a legal opinion on whether there was an actionable case here for us unduly punishing a private business with the threat of loss of money spent today and opportunity lost. That's how I started this whole thing.

What's come to light is a few issues:

(a) That the ministry maybe doesn't support this.

(b) That when the member from Halton answered the question, it wasn't entirely accurate.

(c) We got a letter from the Premier saying, "Yes,

you'll be treated fairly. You've spent millions. You're going to spend millions more."

(d) A rather interesting legal opinion that looks like—and I don't know the gentleman. He's probably a fine person and a good lawyer, but to be frank, it's almost like an economist wrote this: "on the one hand" and "on the other hand."

Having said all that, I think I'm within the bounds of discussion here, because this is what I started the whole process off on: What are the legal ramifications of passing this piece of legislation for the people of the province? I'm saying to you, Mr Chair, considering this letter, considering the member's comments on the record, it would seem to me there's a case here to be made, that I think this company can make and maybe make very well, considering the information before us.

It's just shameful, in my opinion, that we couldn't have had a solicitor or the ministry before us, or the ministers themselves, to answer these kinds of questions, because they're not answered, in my mind. The only thing that's answered is that the member includes in his bill—which scares the hell out of me, I'll say—a "no proceeding" clause which basically says, "No matter how badly we treat somebody, no matter how much money you've lost, no matter how much investment opportunity you've lost, you have no right to sue us or claim back any of your money." Is that the way we treat people in Ontario? If so—I started it off this way and I ask you again, Mr Chair. I haven't had the lawyers come forward to answer my questions. I've got this response—

Mr Duignan: I think I've answered this question numerous times. Let's move on to a new question.

Mr Stockwell: —and now we have this letter from the Premier. I don't think, as a committee, we're covered from a legal point of view to make the kind of decisions we need to make on Bill 62.

Mr Duignan: We've got a legal opinion already.

The Chair: I understand your comments. You've raised them many times, and obviously you feel you haven't got the kind of answers you're looking for.

Mr Stockwell: An answer, period.

The Chair: Any further discussion on this amendment?

Mr Murphy: Do we have an answer to the earlier—he's coming. Okay.

The Chair: Is there anything additional you want to raise?

Mr Murphy: Well, it depends on the answer.

Mr Stockwell: I'll ask the question directly to the member from Halton. Do you think it's fair and reasonable that your bill, Bill 62, will be adopted, that a company will have spent millions of dollars in this province, with a letter from the Premier saying they'll be treated impartially, treated fairly under the process, and in fact will be out literally millions and millions and millions of dollars? Do you think that's a fair process and a fair undertaking and a fair message to deliver to the people of this province when it comes to doing business here?

Mr Duignan: My bill is a fair bill for the people of this province.

Mr Stockwell: That's not the question. I'm talking about this group. Let's get right down to the short strokes.

Mr Duignan: That's my answer. Tough if you don't like my answer—and tough that you're taking your advice from the RSI lawyers over there.

Mr Stockwell: This group has spent millions of dollars to develop this site. Is it fair to them that they're going to spend millions of dollars and lose it?

The Chair: Mr Stockwell, you've made the point. I think he's answered it. I know you're not happy with the answer.

Mr Stockwell: It's not a question of being happy. Let me make the point that he doesn't answer the questions, and when he does answer the questions, they're inaccurate.

Mrs Caplan: He should be in cabinet.

The Chair: Any further questions or points that people want to speak to with respect to this amendment?

Mrs Caplan: Can we just vote?

The Chair: I think people are ready.

Mr Duignan: First, we have two answers to two questions. The legal people say there is no conflict with the Environmental Bill of Rights. Second, on the question of the transfer stations, there are two exceptions to the prohibition provided in subsection (2). The first is (a), that any new transfer stations, recycling facilities etc are okay if they serve the local municipality; and the second exception is (b), where any site, landfill, transfer, recycling etc was approved prior to the bill, except where it would expand the footprint of that particular site.

Mr Murphy: You've outlined what the policy view is, which is that you don't want any transfer station, recycling facility or composting site to be enlarged, except by way of a lift. My concern on clause (3)(b), the way I read that, is that it's really directed to landfill sites and does not encompass transfer stations, recycling facilities and composting sites. I'm wondering if you would consider amending the wording to make it clear, if your purpose is that, that it's more than just a landfill site that's being referred to in clause 3(b).

Mr Duignan: We can list them in clause (3)(b).

Mr Murphy: Then I think you should do it. You've got the people surrounding you. I'm just throwing this off the top of my head.

Mrs Ellen MacKinnon (Lambton): There ain't much there.

Mr Murphy: Thanks for joining the debate. I appreciate it. I'm sorry to have disturbed you.

Mr Duignan: I've directed legal counsel to add "transfer station, composting site and recycling facility" to (b).

Mr Murdoch: Say that again, Noel. Give us that again.

Mr Duignan: For clarification, I'll reread clause (3)(b).

"(b) in the case of a site approved before this subsection comes into force, a proposed use, operation, alteration, enlargement or extension of a waste disposal site, transfer site, recycling facility or composting site which will not result in a greater area at a landfill site being covered with waste than permitted under the existing approval."

Mr Murphy: I think it would make more sense to put those three additional places after the words "landfill site" than after "waste disposal site." Alternatively, instead of saying "landfill site," just put "waste disposal" and that includes them all.

Mr Stockwell: Strike "landfill" and put "waste disposal."

Mr Duignan: I'd just like two minutes to rewrite this properly.

The Chair: Okay. We'll recess for a few moments.

The committee recessed from 1520 to 1525.

The Chair: I call the meeting to order.

Mr Duignan: I think we've got it finally worked out. I will reread clause (3)(b):

"(b) in the case of a site approved before this subsection comes into force, a proposed use, operation, alteration, enlargement or extension of a waste disposal site which will not result in a greater area at a waste disposal site being covered with waste than permitted under the existing approval."

We've taken out "landfill site" to substitute "waste disposal site."

Mr Stockwell: I think that does it.

Mr Offer: With respect to the amendment, it's moved, but it's still clear that a recycling facility servicing more than one municipality will not be able to be expanded save skyward, and that, in most cases, because of the technology, is impossible. By this amendment, whatever the certificate says at the time of the passage of the bill freezes that facility for all time, and that, I will tell you, I believe runs contrary to the government's position as stated under Bill 7.

The Chair: Are members ready for a vote on this?

Interjections.

The Chair: I'd rather discourage this other dialogue.

Mr Stockwell: Mr Offer, would you explain that very briefly?

Mr Offer: Under clause (3)(a), where it speaks to subsection (2) not being applicable to a recycling facility which receives waste from a local municipality, it therefore must be that it does apply to a recycling facility which services more than one municipality. Therefore, any recycling facility in this area that services more than one municipality, cannot, by virtue of Bill 62, have its capacity expanded. In other words, the recycling the area is doing cannot be increased without some significant cost, by transporting out of the area the bill applies to. It's absolutely clear.

Mr Stockwell: I don't think that's what you're intending to do.

Mr Murphy: Or is it? Maybe it is.

Mr Stockwell: I don't think it is. You're not suggesting that recycling depots or areas, should they become hugely successful under your government's 3Rs program, not be allowed to expand. But the only way you can expand, the way you've got it worded here, is if you go up in the air, and you can't do that in the recycling program.

Mr Murdoch: Tin cans fall down.

Mr Murphy: Maybe that is your policy intention: that you can't expand them in the plan.

The Chair: Do you want to pursue that one?

Mr Perruzza: We're going to stand that one down and we're going to get back to you on that one, okay?

Mr Murdoch: Do you want another adjournment? Is that what you're asking for, Tony, another adjournment?

Interjections.

Mr Murphy: Mr Chair, through you to the member who's moving the bill, all I want to understand is the purpose he's trying to achieve. If this accords with the purpose, that's fine, we understand. If it doesn't, maybe other changes can be made. All I want to know is, is the purpose of this amendment as moved, to have the result so that you can in fact establish, alter, enlarge, operate or extend a transfer station, recycling facility or composting site, provided it takes waste only from a local municipality? That, it seems to me, is purpose one. That you can do, is my interpretation, and I assume that's your purpose.

The second thing you can do, in a case of a transfer station, recycling facility or composting site that takes waste from more than one municipality, the only thing you can do with that—well, there are two things. One is that it has an existing certificate and it can do whatever that certificate allows it to do, and second, it can expand or be altered or changed provided those changes don't expand the area in which the recycling or transfer or composting occurs.

That's my understand of how this now works. All I want to know is, is that what you're trying to do?

Mr Duignan: That's what I'm trying to do.

Mr Murphy: Okay, thank you.

Mr Offer: In other words, a recycling facility that is designed to serve more than one municipality in this area would be prohibited?

Mr Murphy: No, a new one would be.

Mr Offer: That's what I'm saying. A new recycling facility—

Mr Duignan: That serves more than one municipality would be prohibited under this bill, yes.

Mr Offer: So if you're in favour of recycling, you would be against this amendment.

Mr Duignan: No. I'm in favour of recycling, and this amendment deals with recycling within that local municipality. Don't forget that they can build recycling facilities outside of the plan area. We're talking about a very unique, special area, the Niagara Escarpment. This bill prohibits large-scale transfer stations, waste etc within the plan area.

Mr Stockwell: I'm sorry, but this point needs to be made. If he's going to go on the record saying this, it's important. If Sydenham and St Vincent, which are in Grey, which have populations of approximately 3,000 each, wanted to get into a recycling program, they couldn't do so unless they did it on their own. They'd have to institute a full recycling program for 3,000 constituents.

Mr Offer: They're in favour of a whole bunch of little recycling plants.

Mr Murdoch: The plan area takes half our township.

Mr Stockwell: I don't think that's what he means.

Mr Duignan: If it's in the plan area, but there's nothing stopping them from doing it outside the plan area.

The Chair: I think you've all made your questions very clear on the record. Are we ready for the question?

Mr Duignan: We're ready, Mr Chairman.

Mr Stockwell: No, I want to speak to that clause. This particular piece of legislation is reaching such a stage, is such a dog's breakfast at this point, that you have the member from Halton suggesting to this committee and to the public in general that no, you can't have—I mean, they've been talking recycling since they got elected—a recycling depot for a community unless it just takes the recycled materials from in that community.

There are communities out there with 3,000 and less that have 50% of their town property on the area your bill covers. If you're suggesting to me that you're either tired of doing this and it's becoming tedious, that's one thing, but to suggest as a policy statement that you can't amalgamate recycling depots in communities across this province is absurd.

I'll give you an example. Metropolitan Toronto, with some two and a half million to three million people, itself operates mutual and joint recycling depots, and it has two million or three million people. You allow them to work in concert to recycle goods through Metropolitan Toronto, yet a little place like Sydenham or St Vincent, of 3,000 people, you're telling me can't. That's just absurd.

Mr Murdoch: I have a question for Noel. In our area also, the city of Owen Sound recycles, and in the township of Sydenham a company just got the contract to pick up the recyclables. They've applied for a permit, and I know it's in the rural area. The permit's been applied for but it hasn't been granted at this point. If this bill passes, they won't be able to go ahead and recycle. Is that what you're saying? This just occurred to me right now.

Mr Duignan: I think I've already answered the question.

Mr Murdoch: No. They're not going to be able to, are they?

Mr Duignan: I've already answered the question.

The Chair: That question has been raised many times.

Mr Murdoch: Not that question. I just mentioned Owen Sound.

Mr Stockwell: This isn't a transfer station. It's a recycling station.

Interjections.

The Chair: Hold on. You've asked your question.

Mr Murdoch: The whole point of this is that this bill's been designed for one area, but unfortunately you're infringing on the rights of other areas. You may have a problem at home, and I understand that. I'm just saying that a company has applied for a permit for recycling, and it's not going to be able to do that now. For them to operate, they're going to have to pick up more than just one municipality. They do the city of Owen Sound and the township of Sydenham, but they're looking for more around there. I know the site they're going to put the recyclables on is on the rural area. They've applied for it, so they're going to have to make sure they go down and try to hustle that permit through before this is passed, is that right?

Mr Stockwell: Economy of scale.

Mr Murdoch: If it doesn't—they own the land already. They've owned the land for some years—

The Chair: I think the point is clear, Mr Murdoch.

Mrs MacKinnon: Are they in the plan area?

Mr Murdoch: Yes, they are in that plan area.

Mr Duignan: If the recycling facility is by that local municipality, they would be able to site it within the plan area. If it's more than one municipality, they would not be able to site it within the plan area.

Mr Murdoch: So they'll have to collect the recyclables for the one municipality, dump them in one spot, have a lot of people upset, and then they're going to have to go down the road and do it in another spot.

Mr Duignan: I'm sure the particular municipality would be able to find a site that's not within the plan area.

Mr Murdoch: You don't understand, that's your problem. You don't understand that a lot of that area is taken up, up there. When you talk about the plan area, you've gone too far. Now we'll have two sites instead of one because of your bill. Do you realize that? Maybe even four sites.

Mr Duignan: That's just your speculation, Bill.

Mr Murdoch: No, it isn't. I live there.

Mr Offer: A great deal of discussion has gone on around this particular amendment. There is absolutely no question that there are some concerns about how this particular amendment will work, or not work, in practice. I certainly have some concerns about whether it meets the needs of not only the people who have come before this committee, but, I must say, whether this particular amendment to the bill meets the principles and objectives of the mover of the bill.

I would think that the way in which one can deal with these concerns would be to move this bill out of this committee into committee of the whole so that the problems of this amendment can be dealt with.

The Chair: Is that a motion you want to make, or is that a suggestion you're making?

Mrs MacKinnon: That's a motion.

Mr Murphy: Can we do that?

The Chair: You can move that, I suppose.

Mr Duignan: We're in the middle of debating another motion here right now.

The Chair: I realize that.

Mr Offer: I'm saying, let's pass this bill out of this committee. Let's put it into committee of the whole and deal with this amendment, which has many questions that still have to be answered.

Mr Stockwell: And then you bring it back and pass it today.

The Chair: Obviously, there's an amendment on the floor. That's something the mover may want to consider. If not, this is the amendment we're dealing with at the moment.

Mr Murphy: That means it passes through this stage. We don't reconsider it.

The Chair: I think you're quite clear. Your point is clear.

Mr Murphy: I'm not sure that the people out there would understand what's going on. It's important for them to know that what we're proposing is that this needs further consideration and consideration in the House—

The Chair: It was clear.

Mr Murphy: If I can just complete, and that we think it also needs the further input of the Ministry of Environment, those officials of the government, and being in the House will provide that opportunity for that debate. We think the principle of protecting the escarpment deserves that this be passed for that consideration in the House. The proposal is to pass this into the House to be fixed there, so we're not doing this on the back of an envelope; we're doing it after full and due consideration, so we can get a bill that the people who came in front of this committee can live with and that satisfies concerns for procedural fairness.

Mr Offer: And, Mr Chair, I would hope that the members of the government would be in support of moving the bill from the committee stage to the Legislature.

1540

The Chair: All right. Your points are very clear. On this amendment before you, are you ready for the vote?

Mr Stockwell: I think he's moved a motion.

The Chair: But he can't. We're dealing with an amendment before us. That's the difficulty. I understand what both of you have said. That's something they can consider. They could withdraw that.

Interjection: Is there a motion to defer?

Mr Murphy: No, it's not. It's referral, a motion to refer.

The Chair: You could move to refer it, if you think there's anything to be gained by doing that. I think they understand what you have raised, and if they want to propose that—

Mr Stockwell: I think it's a worthy motion. It's a motion to refer. Let's deal with it.

Mr Offer: Do you understand? It means we've passed the bill.

The Chair: Mr Offer, they have understood. There's a motion to refer this to committee of the whole. I think we're ready for the vote. All in favour of that motion? Opposed? That is defeated.

On this amendment, are we ready for the vote? All in favour of the amendment? Opposed? That carries.

We have a PC motion in front of us. Do you want to read it into the record, Mr Murdoch?

Mr Murdoch: Okay, but it's a little different now because now it's an amendment to their amendment. I can't move an amendment to the original bill.

The Chair: You would be amending the bill through your motion. Just read your motion.

Mr Murdoch: I move that section 1 of the bill, as amended, be amended by striking out—it's the word "planning" area and not "plan" now, and it's in the third line; we can get that straightened out, if it's just the bill as amended—by striking out the word "planning" in the third line and substituting the word "natural." Can I read what that would do to subsection (2)?

"(2) Despite subsection (1), no person shall use, operate, establish, alter, enlarge or extend a waste disposal site in the Niagara Escarpment"—where it says now "planning area," I'm changing that to—"natural area as set out in the Niagara Escarpment plan." Okay? That's the word I'm changing.

I don't know whether everybody understands, but the planning area includes different areas within the planning area, and the important area on the escarpment is the natural area, which I think everyone in the province wants to protect. I don't know of anybody who doesn't. I think if we protect that natural area, we're going to protect the Niagara Escarpment and the integrity of it. We don't need to go out beyond that. That's the reason I'm moving this motion, that that area would still stay protected and this bill would go on. I could support it.

Mr Murphy: Just a question of clarification: Am I right that there are natural, protected and rural areas?

Mr Murdoch: That's right.

Mr Murphy: So this would apply only to the narrowest, the natural?

Mr Murdoch: The important one, the one we've heard about all day, how there are holes within the rock and if we put a garbage dump on it, it will leak. That's where the natural area is, that's where the swamps are, and that's the important area of the escarpment. That's what we want to protect. We had an expert here say that if you put it in areas where you have clay and a bit of sand, that would be a fine area. Well, if you get out into the rural area, that's what you have.

The Chair: Additional remarks or comments on this amendment? I think we're ready for the vote.

All in favour of this amendment? Opposed? This one is defeated.

Is there another PC motion?

Mr Stockwell: I move that section 1 of the bill, as amended, be amended by adding the following subsection:

"Compensation

"(3) The Ministry of Environment and Energy shall provide compensation to any individuals or corporations who experience economic loss as a result of the application of this act."

I phrased it as "economic loss," but I'm prepared, if the government members want to amend it, to talk about "the tangible loss," or "accrued" or "approved" or "accepted loss." If you as a government are going to entertain motions and pieces of legislation such as Bill 62, you have, in my opinion—

Interjection: That's out of order.

Mrs Caplan: No, it's changed the intent.

The Chair: My sense was that it's different, but we're just getting some advice here. We'll see.

Mrs Caplan: It commits the treasury, and a private member's bill can't do that.

The Chair: The point Mrs Caplan is raising is what we're getting from legislative counsel.

Mr Stockwell: So what is the ruling?

The Chair: There are two things: You can withdraw it, or I'll rule it out of order.

Mr Stockwell: I know you have the power to rule it out of order, but usually when someone rules something out of order they give a reason.

The Chair: When it commits the government to expenditures of public funds, that is a problem. Therefore it would be out of order.

Mr Murdoch: How do you know there's going to be any funds?

The Chair: Because it's "shall provide compensation to."

Mr Stockwell: Then I will say "The Ministry of Environment and Energy investigate providing compensation." You've got to get up pretty early, Mr Chair.

The Chair: Mr Stockwell, would you do us the favour then of withdrawing the previous motion and rereading it into the record?

Mr Stockwell: Will do. I withdraw what I just read into the record and I now put in the new, amended, amended version into the record. Same amendment, same section etc.

"The Ministry of Environment and Energy shall investigate compensating any individuals or corporations who experience economic loss as a result of the application of this act."

I thank the member for Oriole for her assistance, and the member for St George-St David as well, and of course the member from Halton.

1550

There are a couple of points of view I have vehemently disagreed with this government about. Some will say everything, but that's not quite true. I did agree with the way they negotiated the NBA deal with David Stern. But as to Bill 4, the rent control legislation, they retroactively changed the regulations that people were supposed to live by and it caused economic hardship on landlords, because they were acting and moving within the law of the land at the time and then the government changed it.

In my opinion, a government that enacts legislation that way, by writing legislation like that and by putting in, subsection (4)s, like it did here today, is the lowest form of government that could possibly be elected. I say that from the bottom of my heart. I don't believe any government should legislate change that adversely impacts a private citizen in this province from a financial point of view.

I am prepared to accept the fact that the socialists are in power in Ontario, and I accept the fact that from September 6, 1990, on, if they are going to introduce legislation that is going to cost the taxpayers of this province and the individual business people of this province money, so be it. That's the right they have, because they got elected on September 6.

What I find distasteful and absolutely unacceptable is retroactive legislation or legislation that is designed to cost a publicly traded or publicly owned company money, for their own ends. Fundamentally, we all know why this bill is before us. It's as clear as a pane of glass.

The member from Halton does not want the Acton quarry landfill site to be opened. I understand that. I accept that. That may be a good reason to elect the member from Halton and it may help significantly in his re-election campaign. I understand that as well. I understand the issues surrounding politics—I've been involved for the last 12 years—so you're not surprising anyone with the motion, how it's worded and the positions. All this love and comfort about recycling and protection and so on and so forth comes down to one simple fact: The member from Halton wants to shut down the Acton quarry because it makes good political sense.

Mr Perruzza: On a point of order, Mr Chairman: When you allowed that, how long can he go on for?

The Chair: We try to urge the member to come to the motion, of course. We allow for some latitude from time to time, but I think Mr Stockwell is ready to finish.

Mr Stockwell: Mr Chair, with all due respect, this is absurd. It's beneath even the member for Downsview or Yorkview, I'm not sure which.

The Chair: To be fair, you should speak to the motion.

Mr Stockwell: That's what I'm doing. Before you can deal with the motion, you must understand what motivates the bill, and I'm telling you why the bill is here. I'm sorry if the member for Downsview or Yorkview doesn't agree with that, but I'm trying to point out why this bill is before us.

I'm not arguing with the member from Halton's right to bring it forward. I'm not arguing with the right of those people out there to be here and suggest that this is a bad place for a dump. For heaven's sakes, I sat through hours and hours of public hearings about why dumps shouldn't be where they're proposed to go. I understand that.

But the point I'm trying to make with this amendment, is that if you're bound and determined to make these kinds of decisions in the province that affect communities and areas around the Niagara Escarpment, and when citizens out there, who are also citizens of this province,

have invested millions of dollars to bring a landfill site forward in the Acton quarry, well within the law, I might add—

Mr Perruzza: On a point of order, Mr Chairman: This is an environmental issue. I disagree with that partisan, political stuff. That's my own particular point of view.

The Chair: Thank you, Mr Perruzza. It's not a point of order.

Mr Stockwell: I can't believe that anyone in the Legislature of the province of Ontario would suggest he doesn't agree with politicking.

What we have here is a bill that is designed to shut down an operation that is legal, conforming, and making its way through the environmental assessment process that you yourselves accepted and in fact implemented. If you're going to do that, if you you're going to shut down this landfill site, which you have the right to do and may in fact do—I'll say to the member for Downsview or Yorkview, I'm not sure which, as long as you go like that, I guarantee I'll go longer.

If you are prepared to tell a business in this province that it is going to lose millions of dollars operating within the law, that it is going to have a legislative bill saying, "No matter how badly we treat you, you can't sue us," and when they have a letter from the Premier saying, "We're aboveboard and we won't treat you any different from anyone else, and the process is independent from our actions and assures the parties concerned a fair public hearing," then all I say to you members across the floor is that you must compensate. It's a simple, fair fact of life.

If it were a citizen coming forward here today, who was in the middle of building an extension to their house on the parcel included in this bill and you said to them, "You can't build this extension; it's against the law," I would ask the same for them: that you must give them the money they've invested in that extension that you will not allow them to complete, when they were operating within the law.

That's simple. It's a simple case of fairness. That's all I say: fairness. If you want to stop this, you'd probably have a lot more support on this side of the House, or at least from this party, if you were going to treat the parties fairly. The minimum fairness is, give them back the money they spent within the confines of the law that you yourselves set down. I don't know of anyone who would argue with that point and have a clear conscience doing so.

Mr Murphy: I do have a concern about the procedural fairness, especially given a kind of undertaking, essentially, from the Premier to the RSI people that they should proceed and spend money on the process. The issue then falls down to whether you say you should allow the process to continue; if not, because you've in effect told them they could go ahead, you should compensate them for the money they've spent. Legislation that takes away both presents a real problem.

I just found a quote from a judge in a very recent case which I think talks about exactly this issue. He says this

kind of taking away both those options “is repugnant to the tradition of our Legislature...enacting an ex post facto statute that deprives citizens of the fruits of their judgments attained or likely to be attained under prior legislation, other legislation which in good faith they relied on to their pecuniary cost.” I think that’s the principle that is being espoused by the amendment.

I have some concern about economic loss. I don’t know how you would calculate loss of profits and whether there should be profits calculated and whether all individuals who are in the process should be compensated. I think there is a clear distinction between RSI, because of the letter by the Premier that gave them an undertaking, and other circumstances, although there may be ones of which we’re not aware. Mr Murdoch made reference to a recycling application in his area which may be in a similar standing.

The amount of the compensation—when, how paid, whether it just compensates the actual money they’ve spent—are issues about which there can be reasonable debate. I think it’s appropriate that the government at least consider the issue.

The Chair: Further debate? Seeing none, all in favour of this amendment? Opposed? That is defeated.

Now to the whole section: Shall section 1, as amended, carry? That carries.

Shall sections 2 and 3 carry? That’s unanimous.

Interjections.

The Chair: Oh, sorry. I thought I heard “carried.” Opposed? That’s carried, just not unanimously.

Shall the title carry? That carries.

Shall the bill, as amended, carry?

Mr Offer: Recorded vote.

The Chair: On a recorded vote. All in favour?

Ayes

Akande, Caplan, Duignan, Harrington, Huget, MacKinnon, Murphy, Offer, Perruzza.

The Chair: Those opposed?

Nays

Murdoch (Grey-Owen Sound), Stockwell.

The Chair: Ordered that the Chair report Bill 62, An Act to amend the Environmental Protection Act in respect of the Niagara Escarpment / Projet de loi 62, Loi modifiant la Loi sur la protection de l’environnement à l’égard de l’escarpement du Niagara, as amended, to the House.

The committee adjourned at 1601.

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projet de loi 62, M. Duignan J-1075

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- ***Chair / Président:** Marchese, Rosario (Fort York ND)
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- Chiarelli, Robert (Ottawa West/-Ouest L)
- Curling, Alvin (Scarborough North/-Nord L)
- *Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- Malkowski, Gary (York East/-Est ND)
- Mills, Gordon (Durham East/-Est ND)
- *Murphy, Tim (St George-St David L)
- Tilson, David (Dufferin-Peel PC)
- Winninger, David (London South/-Sud ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Chiarelli
Huget, Bob (Sarnia ND) for Mr Winninger
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
MacKinnon, Ellen (Lambton ND) for Mr Malkowski
Murdoch, Bill (Grey-Owen Sound PC) for Mr Tilson
Offer, Steven (Mississauga North/-Nord L) for Mr Curling
Perruzza, Anthony (Downsview ND) for Mr Mills
Stockwell, Chris (Etobicoke West/-Ouest PC) for Mr Harnick

Also taking part / Autres participants et participantes:

Ministry of Environment and Energy:

Nixon, Brian, director, environmental planning branch
Ng, Wilfred, director, approvals branch

Clerk / Greffière: Bryce, Donna

Staff / Personnel: MacKinnon, Margaret, legislative counsel

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Assemblée législative de l'Ontario

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Official Report of Debates (Hansard)

Monday 7 March 1994

Journal des débats (Hansard)

Lundi 7 mars 1994

Standing committee on administration of justice

Tenants and Landlords
Protection Act, 1993

Comité permanent de l'administration de la justice

Loi de 1993 sur la protection
des locataires et des locateurs

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 7 March 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 7 mars 1994

The committee met at 1411 in the St Clair/Thames Rooms, Macdonald Block, Toronto.

TENANTS AND LANDLORDS PROTECTION ACT, 1993

LOI DE 1993 SUR LA PROTECTION
DES LOCATAIRES ET DES LOCATEURS

Bill 20, An Act to protect the Persons, Property and Rights of Tenants and Landlords / Projet de loi 20, Loi visant à protéger la personne, les biens et les droits des locataires et des locateurs.

The Chair (Mr Rosario Marchese): We'll begin with Mr Runciman, with an opening statement.

Mr Robert W. Runciman (Leeds-Grenville): Thank you. I have some very brief comments to open the afternoon.

During the second reading debate on Bill 20 in the Legislature, there was some opposition from government members, and I was speaking to a number of them who opposed the legislation. Afterwards, they had indicated that if I had introduced a resolution rather than a bill, they would have had no difficulty in supporting it because they agreed with the intent of what I was attempting to do.

I didn't believe a resolution was appropriate. I felt that this was an extremely serious matter, and the only way that it should be dealt with, in my view, was through introduction of a bill and then an opportunity to have a public hearing process so that members from all three parties would have an opportunity to hear from people out on the front lines, people who are dealing with these kinds of problems on a day-to-day basis: police officers, tenants, landlords, social workers and so on.

There were a number of, I think, legitimate concerns raised in the debate. I acknowledge the weaknesses. I know that Mr Winner led the debate for the government members who were opposed to the legislation and he raised a number of valid points. We've attempted since that time to address those concerns that he raised and others through a number of amendments which you all have in front of you now.

We don't have, obviously, the resources in opposition that the government has to deal with these things. I don't think I can be criticized in terms of introducing the bill and then tabling a number of amendments now when we take a look at the government's own legislation: for example, the employment equity legislation, where following introduction and second reading, the government brought in something like 100 amendments with all the resources available to government. So we've tried to acknowledge the concerns and address them through the

amendments. What's the need for this kind of legislation? Hopefully, we're going to hear answers to that question in the next couple of days, but I want to say just a few things for the record.

According to the 1994 report Drug Use in Metropolitan Toronto by the Metro Toronto Research Group on Drug Use, crack cocaine is the most prevalent drug seized on the streets of Metro and represents almost half of all drug seizures. Some 2.2 kilos of cocaine were seized in the second quarter of 1993. That's the highest since monitoring began in 1989. Cocaine use was linked to 39 deaths in 1992, three times the number in 1986. Heroin was linked to 60 deaths, thanks to the extremely high levels of purity available. Heroin seizures jumped by 37% in 1993 and now account for 10% of all drug seizures.

According to a Metro Toronto police officer in district 5, it's an open market in the Regent Park area. People are approached in the street for buys in broad daylight; an average of three to four traffickers a day are being arrested by police. In district 1, the officer said that heroin in the Queen and Ossington area is as accessible as crack is in the Regent Park area.

Clearly the use and sale of drugs is of serious proportions. Bill 20 is designed to make it as difficult as possible for traffickers to use rental units as a home base to make the drug system work. By not doing everything possible to oust drug dealers from public housing and privately owned units, we are in effect subsidizing these people, condoning the havoc their activities wreak on families, including their own, their neighbours and society at large.

In the next two days we will hear about drug dealers using two or more apartments in a single building to conduct business: one apartment to cook up the drugs, another to take orders, a third to keep the money. We will hear about shooting galleries. Those are apartments where 30 to 40 people at a time are in the apartment using illicit drugs. We will hear about the problem of dirty needles and the spread of AIDS. We will hear about how these dealers threaten neighbours, threaten children, threaten everyone around them.

Bill 20, I acknowledge, is far from perfect, but it is an attempt to acknowledge and do something about a very serious problem affecting many communities across this province. I hope the next three days will not see a lot of partisan jousting, but a real and meaningful effort to try and come to grips with a most serious problem.

Mr Robert V. Callahan (Brampton South): One of the observations I would make here, and maybe you can

address it, Mr Runciman, is that in reality you can have a drug trafficker or a drug importer who perhaps is the male of the family, and you've got a wife and several children who live in that accommodation who, as I read this act, would also be homeless as a result of the actions of the perpetrator. I think that's one of the places where I find it difficult, particularly if this took place in wintertime or whatever. Where do they go? I think the idea is a good idea, but I think that possibly you've overlooked that. That can be remedied in some way by amendments to the act.

But it's kind of like some of the other pieces of legislation that this province has passed where they are attempting to remedy a serious situation. I can think of situations such as the amendments that were made to the Highway Traffic Act in terms of impaired driving. There's no question that impaired driving is a very serious situation in this province, but the net effect is that you've got people who blow .08 getting the same thing as people who blow 300 and are almost dead. Many of them are truck drivers and in effect what happens is, when you take their licence away for a first offence for a year—and I'm speaking, I guess, about something that we did ourselves, our government brought in—you in fact put these people on welfare.

So I think we have to be very careful. I agree this should not be a partisan bill. This should be a bill to rectify something that's a very serious issue, no question about it, but I think that we should all be prepared to look at it and try to craft it in such a way that we don't spread the net too far or too wide to catch the innocents of the world as opposed to the people who are the real troublemakers. That's my major concern.

Mr Runciman: Very briefly, I know that's a valid concern and certainly I indicated at the outset that there are some weaknesses in the legislation. Hopefully we can address those. But the other side of the coin I guess is that those families, the children in those situations that Mr Callahan described, are also victimized the moment drugs come into their home, and I think we also have to recognize that and somehow come to grips with it.

1420

Mr David Winninger (London South): I certainly agree with Mr Runciman that we should not make this a partisan issue, because I think all parties have an interest in enforcement of the law and specifically in enforcement of our drug laws.

I appreciate the amendments that Mr Runciman put forward in response to some of the arguments raised at the debate on second reading. There are a number of concerns, I think, that we're going to articulate during the course of these hearings.

I certainly endorse Mr Callahan's remarks about the potential and the danger in fact of evictions of entire families of drug dealers, and in many cases, as you undoubtedly know, Mr Runciman, drug dealers often prey on single mothers and use their accommodation in some cases for dealing in drugs.

What happens once the drug dealer and the innocent co-tenants are ousted from their tenancy? What happens

in that case? Won't the drug dealer simply move on to another unsuspecting single mother or other co-tenant and subject them to the same danger?

It doesn't solve the problem in any way; it simply moves it from one residence to another. That's certainly a major concern.

We know there have been a number of drug seizures recently. We know that prosecutors are vigorously dealing with drug charges. We see that in the media and we know it from our everyday experience.

We also know at the same time that there's a much less onerous burden of proof where a tenant violates the terms of a lease or violates the Landlord and Tenant Act by, for example, carrying on an illegal act on the premises. In that case now a landlord may apply for eviction based on the carrying on of an illegal act as well as the interference with the quiet enjoyment of other tenants.

We would also question why we need such a heavy hammer to deal with offences that can be dealt with under the Landlord and Tenant Act in a summary manner, because part IV of the Landlord and Tenant Act was designed to deal with landlord-tenant disputes in a summary manner. I question why we need to resort to the criminal courts.

The first amendment you put forward, introducing the words "in the Ontario Court (General Division)" in subsection 1(1), is not very helpful, and I say that because to my knowledge and in my experience the provincial courts deal with at least 90% of all drug charges, and I know why you amended that section because of the jurisdictional problem and the constitutional problem with provincial court judges being clothed with the jurisdiction of what should be section 96 judges, and the Supreme Court ruled on that fairly unambiguously back in 1979.

You might be dealing, if you're lucky, with 10% of the offenders who are able to elect on up to the General Division. You're not going to be able to deal with 90% of offenders who pass through the provincial courts. I know why the amendment's there, but I don't find it particularly helpful.

The Chairman indicates that my time is up. There are many other points that we can raise in relation to the bill but perhaps we can raise them through the course of the hearings or during the clause-by-clause.

Mr Runciman: I think we'll hear through the course of the hearings that there is a problem. Mr Winninger has mentioned the Landlord and Tenant Act, but clearly it's not working. I think that's what the evidence will indicate, and my view is that there may be indeed some problems with this legislation but I don't believe as a Legislature, as a government, we should be leaving the problem the way it is. My response essentially is, let's find some answers.

Mr Callahan: I just have a query of Mr Winninger. You raised the comment as to why Mr Runciman changed subsection 1(1).

Mr Winninger: I think I know why he changed it.

Mr Callahan: I don't quite follow that because that is exactly what the Highway Traffic Act does and there's

no jurisdictional question there at all. Upon a conviction for impaired driving or over 80, it triggers a one-year suspension of your licence. I don't see what difference there is between that and this original proposal that would have any jurisdictional difficulties.

Mr Winninger: As you know, with the Highway Traffic Act it does trigger an administrative response, ie, the suspension of the licence. Back in 1979, the government of the day introduced a bill that would have allowed provincial court judges to issue eviction orders to tenants. That was challenged, and the argument was made and accepted at the Supreme Court of Canada that provincial court judges don't have constitutional jurisdiction to issue eviction orders.

Mr Callahan: Maybe I can find that case for them afterwards and relay it to them.

Mr Winninger: Yes. Anyway, that's your answer on that question.

Mr Callahan: Okay. That's fine.

The Chair: Besides that, we'll find other opportunities to raise other questions like this and answers from different people at the appropriate time.

GREENWIN PROPERTY MANAGEMENT

The Chair: Mr Verschuren, Greenwin Property Management. You have half an hour for your presentation. We ask people to make it as long as 15 minutes to allow five minutes per caucus. Please begin.

Mr Henry Verschuren: Thank you, Mr Chair. Thank you to the Vice-Chair and the honourable member for allowing me to come here today.

Greenwin Property Management is a large landlord in Toronto. We have about 15,000, give or take, suites in the Toronto area. I'm the manager of legal services, and as such I'm responsible for all the actions before the Ontario Court (General Division) under the Landlord and Tenant Act.

I've given some materials out prior to today. I know that you're all very busy. So what I have done in the formatting of this is put in a quick reference guide. I have summarized every section of the bill and made some proposals as to amendments there. On the first page after the table of contents, you'll see it's called Quick Reference Guide. For quick reading, if you want just the essence of what I'm saying, you'll find it laid out in that course.

I want to thank Mr Runciman for one thing. I've read the handout from the Federation of North York Tenants Associations. They agree that the intent of the bill is acceptable, they say. I think for the first time an MPP has been able to get landlords and tenants to agree on something.

In any event, I'll start going through the beginning of the act. I'd like to start with application.

The application of this act, with respect to Mr Runciman, I think is narrow. I would like to see it broadened. It specifically talks about sections 4 and 5 of the Narcotic Control Act. There are a number of happenings in residential situations in this province that are ancillary to drug problems but are not under the Narcotic

Control Act; for example, assaults, break and enters, sexual assault, prohibited weapons. In my experience, if you've got a drug problem, you also have a weapon problem at the same time. Therefore, I'm suggesting that the application of the act be expanded.

The other aspect of it is, with respect specifically to the Narcotic Control Act, sections 4 and 5 speak of trafficking. It does not speak of possession, which is section 3 of the Narcotic Control Act, and I think that should also be applicable here.

Now, should we terminate a tenancy simply for possession? I think that depends on the degree of possession. I'll show you in some court cases I've submitted to you today where that can be a problem. If we're talking about a very small quantity of drugs, that in all likelihood would not affect the other tenants. But the Narcotic Control Act recognizes that. It gives a prosecutor the option of proceeding either by way of summary conviction or by way of indictable offence. The more serious cases obviously go by way of indictable offence, which is why I'm suggesting that the application be changed to include indictable offences under the Narcotic Control Act, whether they be in section 3, 4 or 5, and indictable offences under the Criminal Code, such as assault, sexual assault, break and enter etc.

1430

I have some difficulty with respect to the jurisdiction of a prosecutor, and I think Mr Callahan raised part of it with respect to the innocents involved. The question is this; it's quite simple: Can a presiding judge in a criminal court issue an eviction order against someone who was not a party to the criminal proceedings? In other words, son or husband is convicted of trafficking but the wife or mother is also subject to eviction.

I suggest that there's no jurisdiction for that. I also suggest, for those who are concerned about the eviction of innocents, that it's a very simple matter, and it can be dealt with in regulations: that the writ of possession is worded in such a way that it names the person to be evicted. It's done in the landlord and tenant court now if it's requested.

The other question that we need to ask ourselves is, are the innocents necessarily innocent? In tab A I've given you two examples.

Case A, Metro Toronto Housing Authority v Smith: The Divisional Court in Ontario ruled on an appeal that a mother was to be evicted because her son was convicted of trafficking. Their reasoning was that she knew what was going on and she simply chose to ignore the actions that were going on in her own home. However, in that same paragraph we see Metropolitan Toronto Housing Authority v Jackson, where the mother was not aware of the son's activities and the application to evict her was dismissed, notwithstanding the criminal conviction of the son.

The point I'm trying to make here is that there is some discretion, which I don't see in this bill, under the Landlord and Tenant Act, and I'm dealing specifically with the powers of the court, which in the bill as written is subsection 1(6).

The amendment that I'm proposing is that a judge hearing an application under this act have the same discretion as a judge hearing a matter under the Landlord and Tenant Act. I specifically refer to clause 121(2)(b) of the Landlord and Tenant Act, where notwithstanding the fact that either the prosecutor or the landlord has made their case from a legal standpoint, the judge can still refuse to terminate the tenancy. This is also where, as I mentioned earlier, the judge could at that point issue a writ of possession against one of the occupants of the apartment as opposed to all of them.

That is something that needs to come out on a case-by-case basis. I think the best way to legislate that is to give the discretion to the judges to do that.

I also am concerned about how a prosecutor's application would work with respect to a landlord. What I envision here, as you'll read in my summary, is something that's not happening now. My friend to my left asked, "Why do we need this bill?" It's quite simple. Landlords in this province now do not have the resources to successfully evict drug dealers or people who commit break and enters or people who commit assaults.

The reason for that is very simple. Our main source of evidence is our other tenants, and our other tenants are rightfully afraid to come forward. It's very rare that we can convince tenants to testify in open court against their neighbours because we can't offer them any assurances afterward. However, the way this bill is drafted, we may be prevented from doing that in any event, even if we can convince them.

I think Mr Runciman has dealt with that in the last of the amendments that he put forth today, but what normally happens is that the police start a separate investigation and they work entirely independent of the landlord; again, rightfully so. They don't know at the beginning of an investigation whether the landlord's involved or not. They don't want to tip their hand. These are usually undercover operations and the landlord's the last to know.

What I would like to see is the police and the landlords working together. We can do that by not preventing landlords from applying at the earliest opportunity but by encouraging them to do so and the evidence that's produced at that hearing be used in a criminal proceeding—we have this under "Evidence" and it's lengthy, so I'm going to summarize and let you read it—and vice versa, the evidence used in a criminal proceeding be allowed to be used in a landlord and tenant matter in the Ontario Court (General Division).

The problem does arise in terms of the standard of proof. Criminal proceedings are beyond a reasonable doubt. Civil proceedings are on the balance of probabilities. That does not affect the evidence. If I state to you today under oath that I saw John Smith dealing drugs in the hallway of my apartment building, my testimony won't change whether I'm in a civil or a criminal proceeding. The conclusions that the judge may draw from that will change and whether or not that's sufficient for an eviction will change, but that's up to the judge and we need to allow them to do that job. But what is often called upon by the courts, and I have heard the justices of the General Division ask for this specifically, is that

they want the best evidence available to be presented to them. My amendments that I'm proposing with respect to evidence will accomplish that. We're not duplicating here; as a matter of fact, we're cutting down a lot of time and we're notifying everyone of what would transpire.

Landlords' applications I think must be preserved, but I think we also can work it in with this bill because, as I say, I do have a problem with the prospect of an innocent being a party to a criminal proceeding. If they're not charged, I don't think a criminal court has jurisdiction to execute a writ of possession against them. So there are certain types of applications that a prosecutor will be able to do and the rest must fall under the landlords.

What I do not see in this bill—and again, with respect to Mr Runciman, because a lot of this is based on case law and on my experience in the court and unless you're an expert in the common law surrounding this area, you may not necessarily know about these things. But the Rent Control Act in Ontario and the Landlord and Tenant Act have a commonality in terms of the definitions of exactly who is a tenant and what residential premises are and who's a landlord and I think that it is worthwhile to define the same parties under this act and I suggest that it be done in the same manner as two previous governments have done in terms of the amendments to the Landlord and Tenant Act and the introduction of the Rent Control Act and that they be the same definitions.

I also suggest from technical standpoints that you're going to require notices to be served of an upcoming application. I believe the words are under subsection 1(2), prosecutor's application, "and on reasonable notice to the tenant." How is that going to be done? Let's keep it simple. Let's keep it common throughout the province and make the service provisions under this act the same as the service provisions under the Landlord and Tenant Act so that these matters are covered.

1440

What I'm suggesting to you is that the bill needs to be passed. I'm very pleased to hear that there isn't going to be any party-jousting about this, but the bill also needs to be amended as Mr Runciman has suggested. We need to combine the forces of the landlords and the prosecutors rather than divide them, rather than have one prevail over the other and in fact turn an eviction proceeding from three months in Toronto, which is a long time compared to the rest of the province, to a couple of years. That does absolutely nothing to protect the persons and properties of tenants and landlords.

Due to the time, I'll stop at this point. That's a brief overview. It's all contained in the materials. There are summary sections for you. The essential thing is read tab A. If you're going to read anything, read tab A, because these are the court cases that would not be applicable if Bill 20 is passed as written.

Paragraph (b) on page 2 of tab A talks about a case where a tenant was convicted on 11 separate charges of possession, and the court terminated the tenancy. Under the current wording of Bill 20, this court case would not proceed.

We've talked in terms of whether it can proceed before

a criminal action is concluded. On the next page, page 3 of tab A, we see case (d). Police using a search warrant found a loaded handgun in the rental unit. You'll notice in this case there's no mention of drugs, but we are talking about a loaded handgun. If the crown was to proceed under an indictable offence here, Bill 20 as currently drafted would not apply.

Paragraph (e) is where we have a break and enter, a tenant breaking into other tenants' apartments. We're talking today about the protection of the property and rights of these tenants, but this kind of case would not be covered by Bill 20.

Those are all my submissions verbally today, but again, I ask you to read the written submission too.

Mr Runciman: I want to commend the witness on the time and effort he's put into this. This is the first time I've seen this and I think it's an excellent presentation. I'm not just saying that, because essentially he's supportive of the intent of the legislation although he's certainly drawn a number of weaknesses to our attention. He's not only done that, but he's proposed ways in which it can be changed and remedied. So I very much want to compliment him.

I just wonder if he might address a couple of the things that Mr Winninger mentioned. Mr Winninger was saying that this is only going to impact on perhaps 10% of the problem. I think he may want to elaborate more, but you were listening to that. What's your response to that contention?

Mr Verschuren: I'm not sure that I agree with that contention at least in terms of the way that I propose some amendments here. There may be a constitutional problem, and I think that's something for the committee to straighten out. I hear from Mr Winninger that there is and I hear from Mr Callahan that there isn't, but notwithstanding that, under the amendment that I'm suggesting, we would see more power in terms of landlords' applications, which would be heard in the General Division. I think then you're going to be dealing with a lot more than 10%.

What you need to do is to be able to take the evidence that had been used in a criminal proceeding and apply that to the civil. It's done now. We're not breaking any new ground here in terms of that. I think with the proper notice etc to each party and the right to cross-examine, which needs to be there as well, it's something that can save a lot of court time and still deal with the number of cases that we need to deal with here.

Mr Runciman: One other comment that Mr Winninger made, and I'm sure he'll want to pursue this, is, paraphrasing Mr Winninger: "What's the good of this? All we're doing is moving the problem from one landlord to another. They're simply going to go into another apartment building." How do you respond to that?

Mr Verschuren: There's some truth to that. Absolutely. They will pack up and move down the street. I've seen it where I've thrown them out of one of our buildings and they're in the building across the street. I'm in court on another case and watching the same people get thrown out of there. I have had a quandary, a dilemma,

about that. But I think, in my discussions with police officers in any event, the landlords' aim is the same: We need to shut them down.

The Honourable Mr Justice Sutherland, and I'm going to paraphrase him, stated in a case of ours in his reasons that drug dealers hide in the shade, and what we need to do is to cast light upon that shade and expose them. Once you throw light upon what's happening, it will stop.

I think that position strengthens the reason for this bill, because what we need to do is to have a mechanism in the province where large landlords like Greenwin Property Management who have someone like me on the staff, and smaller landlords or landlords who own single-family dwellings etc, can protect their fellow tenants by something that gives them the mechanism to do it. Yes, they're going to go across the street, but with this bill we'll be able to throw them out of there very quickly too. Let's make it as difficult as possible for these people.

Mr Winninger: I'm sure Mr Runciman, who was probably pleasantly surprised that his bill got to committee, will be even more gratified that you've now provided us with a 30-page guide to a two-page bill, and a very weighty one at that.

I still have considerable difficulty with the direction you're heading in, and perhaps I'll repeat and expand on why.

Right now, the Landlord and Tenant Act deals with illegal acts, it deals with interference with quiet enjoyment, and it deals with harm to other tenants or risk of harm to other tenants, just those three tests for eviction. It's dealt with in a summary way, but it does involve civil hearings.

One of the procedural concerns I have around this bill is that right now our courts are swamped with criminal cases. We've gone a long way towards remedying the pre-Askov situation by hiring more judges, by hiring more prosecutors and more support staff, and we've got the waiting time down to what the Supreme Court said was reasonable, or less: eight to 10 months or thereabouts.

What we're going to have here is criminal courts not only dealing with what they're established to deal with; they're also going to be conducting hearings. There may be some truth in what you say about using the criminal evidence in the civil proceeding or perhaps even the civil evidence in the criminal proceeding. Many judges are generalists and they can hear many kinds of cases in the General Division, but you're going to have judges who are principally trained to deal with criminal cases dealing with civil matters. It's going to swamp the courts even more because instead of doing what they're supposed to do, which is conducting trials and guilty plea hearings and sentencing, they're going to be dealing with landlord and tenant disputes. That's one concern I have.

You say, and I think this in fact buttresses my argument, that there needs to be more discretion in Mr Runciman's bill, and why not invoke the discretion that applies under the Landlord and Tenant Act? Well, why are we reinventing the Landlord and Tenant Act to deal with one particular kind of offence? You come before the

committee today and say: "You shouldn't just stop with trafficking. You should be dealing with possession, and why not deal with a litany of other offences as well?" So you're going to have what can become some very complex proceedings, and even trials, of landlord and tenant issues being dealt with in criminal court. What's your answer to why we need this bill? Well, you say the landlords don't have resources.

1450

I'm sure Mr Callahan would confirm the fact that criminal courts are very reticent to enforce civil remedies. In fact many, many times they've just shied away from dealing with civil matters. They say, "That's not the role of the criminal courts." Even if it was, I guess I have to say to you, if the landlord doesn't have resources to enforce the Landlord and Tenant Act and take these matters to hearings, how is the poor tenant going to be able to defend these proceedings? Certainly most landlords I've had experience with have far superior resources, infinitely superior financial resources to the tenants who are defending.

You're probably asking, "Is there a question in this?" I guess my question to you is, if you're suggesting there should be the same discretion in the Landlord and Tenant Act, if you're suggesting that we should invoke further illegal acts under the bill, basically you're reinventing the Landlord and Tenant Act. I would suggest to you that your focus might be on the Landlord and Tenant Act and not on this kind of bill that tends to merge criminal with civil remedies.

Mr Verschuren: By way of response, I'd like to direct your attention to subsection 1(5), "Evidence", the way it's drafted now: "The court that hears a prosecutor's or landlord's application under this act shall take notice of the evidence admitted in the criminal proceeding."

We don't have to do things twice. The evidence is already in. We're talking about different hearings, more hearings. That's not the case. This is more or less an administrative matter, if anything, but you're not going to be prolonging any criminal proceeding in this province by adding this bill, because you don't need to submit the evidence twice, you only need to submit it once.

The court and in all likelihood probably the same judge—because the judge who hears the trial will be the judge who does the sentencing—has already heard it once. The evidence is all there, and the poor tenant who can't defend himself will have the same resources that he has now. He has the right to be defended and he has the right to defend himself too, but if that's his choice, that's his choice.

Mr Winninger: One ancillary question: You talk about bringing these criminals out of the shadows. Surely that's what the criminal process is designed to do and, when they're finally convicted and sentenced, there are three principles normally invoked: One is deterrence, one is retribution or punishment and one is rehabilitation.

Why would you somehow put these people in double jeopardy? Once they've served their sentence, once they're ready to re-enter society, why should they not have a residence to go back to? This is aside from all the

other concerns about their moving on to other residences and plying their trade elsewhere, if that's their inclination.

Mr Cameron Jackson (Burlington South): Their trade? Are you talking about drug dealing as a trade?

The Chair: Go ahead. Just—

Mr Jackson: I just wanted to clarify, sorry.

Mr Winninger: It's okay. He's out of order and I am in order.

The Chair: It's clarification. Sorry, go ahead. Mr Winninger may not have heard it.

Mr Winninger: Mr Runciman just won't let him on the speakers' list.

The Chair: No, Mr Winninger, he's asking for a clarification.

Mr Jackson: On a point of order, I was clear—

The Chair: Just go ahead, ask your point of clarification.

Mr Jackson: Through the Chair, I apologize I didn't go through the Chair. "Plying the trade." Are we talking about drug dealing as a trade for this individual to ply? I just want to understand.

Mr Winninger: Sorry. I wasn't using it—

Mr Callahan: It's certainly not a profession.

Mr Winninger: He wants clarification. I wasn't using it as a term of art, but if that happens to be how he makes his money, and most drug traffickers, to my knowledge, don't traffic in drugs for free, that may be his trade.

Mr Jackson: Thank you for the clarification, Mr Chairman.

Mr Verschuren: In terms of what you were suggesting, the criteria are in the criminal proceedings. I think there's one more that you've missed and you see it more predominantly in bail hearings, and that is the safety of the general public. That definitely is an issue in a bail hearing, whether or not they're going to reoffend or there's a worry about flight.

Mr Winninger: But a judge can issue an order restraining that individual from associating with anyone the judge sees appropriate.

Mr Verschuren: What we're asking under this bill is that the judge issue an order that this individual refrain from associating or going anywhere near. It's like a restraining order.

Mr Winninger: But a judge can already do that.

The Chair: Mr Winninger, we're running out of time. Sorry. Mr Callahan.

Mr Callahan: I think the best thing that could happen is that we should provide housing in the pen for these people who commit these crimes. But quite apart from that, I share Mr Winninger's concern about this, and I want to look at the jurisdictional issue because putting this in the General Division in my community is just going to cause total havoc. In Toronto there was a complaint in the newspaper today about the 30,000 or 40,000 civil cases that are backlogged.

I think that in looking at this what we might give consideration to is the fact that under the federal Criminal

Code if a person is convicted of an offence where someone has been injured or their property has been damaged, the prosecutor, on application by the aggrieved party, and I guess on notice to the accused, can make an order remedying that by providing a damage claim against them, and that can be filed as a civil judgement. You don't have to go through all this secondary gobbledegook.

I think what we should be looking at very seriously is the question of trying to eliminate the largest amount of litigation from our courts, or we're going to break the camel's back. We've already done it, I think. That may be why the drug dealers are out there being able to roam the universe so freely, because we can't get them on for trial fast enough.

I really think we should think about that, as to whether it might not be more expeditious to do that. I don't want to take any wind out of your sails, Mr Runciman. I think, as I said at the outset, your attempts here are certainly worthwhile, but the more I think about it the more concerns I have in terms of putting more of a burden on the courts.

It might even be possible to do this. I mean, I've seen husbands who've been thrown out of their houses for a year because of an alleged assault and not been able to come back in their houses for a year. That's done in a bail hearing. So I don't think there's anything unique about putting people out of their property accommodations, but I think the way we do it has to be the most expeditious, fair but expeditious, and with less resort to court systems that are just totally overburdened now.

I don't think we have the resources to do it, and I think we'd be in fact giving the drug dealers a leg up by imposing anything else in our courts and preventing the courts from getting on with the business of the day, which is to give these guys—have to be equal time for, I guess, these guys and ladies—permanent accommodation in federally funded or provincially funded institutions.

That's just a statement, but I think we should think about that. It's kind of like when I was on municipal council. We used to pass bylaws endlessly, but we never had the resources to send anybody out to enforce them, so they just became nice political tools, but they were useless.

People relied on them, and of course by relying on them they were misled down the garden path into thinking that they had rights, which they didn't. I think eventually you get to the point where there are no rights. You've got so many rights out there that they can't be enforced. You're at the back of the line.

I think we have to be very cautious about that, that we try to craft a remedy that perhaps is easier. As I said, similar to the situation—although I disagree with the minimum suspension that the Highway Traffic Act imposes, because that doesn't give anybody the right to look at the facts of the case and determine the more serious reading should get a greater suspension than the less serious reading. But I think we should be looking at trying to craft that type of almost automatic reaction or, in the alternative, going to the feds and asking them for

an enlargement of the sentencing provisions that would allow this type of thing to be dealt with that way.

Mr Verschuren: What I would ask all of you on the committee to do is to read in the submission carefully with respect to evidence. What I'm suggesting to you is that if we can use evidence from one proceeding to another the court time will be less.

I gave an example earlier about if I were a tenant testifying that I saw John Smith dealing drugs in the hall. Well, I only need to do that once in the criminal proceeding and then a transcript of that goes over to the other court, rather than my testifying twice and going to two different courtrooms and saying the same thing in both courtrooms. What conclusions get drawn from that evidence in each courtroom are going to be different in terms of the weight of evidence, but we can save a lot of time by allowing the evidence to be admissible in both.

The Chair: Thank you for taking the time to give your presentation to us today.

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TENANT ADVOCACY GROUP

Mr Kenneth Hale: Mr Chairman, I'm here on behalf of the Tenant Advocacy Group. It's a coalition of legal clinics and tenant groups that's been working in the Metropolitan Toronto area for the last 10 years or so to protect the interests of tenants. We try to protect the interests of tenants through going to court and representing them in court, going to the various tribunals that affect the rights of tenants in the relations with their landlords and by coming before this Legislature and other lawmaking bodies to discuss the laws that are being made that are affecting tenants.

We've talked about the bill in detail and what kind of response we were going to make to it. We are acutely aware that substance abuse has a devastating impact on low-income individuals and families, and we're not just talking about narcotics. But because we see the results of these kinds of problems every day in our work, in broken families and broken individuals, we oppose Bill 20. We urge this committee to recommend the bill not be enacted. We think it's an unconstitutional bill, it's an unnecessary bill and it's an unconscionable bill. We'd like to review with the committee why we think that.

First, unconstitutionality: We believe that the bill can't be brought into force because of constraints on Ontario's power under Canada's Constitution. I realize that many members of the Legislature don't agree with this, as I saw from the debate. They seem to think this is some kind of trick that people are pulling on them. But the fact is the Ontario Court of Appeal, in a case called *Reference re Residential Tenancies Act* in 1979, dealt with this very issue. That decision was later affirmed by the Supreme Court of Canada and the Court of Appeal said that provincially appointed officials cannot evict tenants.

If people recall that bill, it was introduced by Mr Davis's Conservative government and passed by the Ontario Legislature after extensive public consultation. It created the Residential Tenancy Commission that was going to deal with residential landlord and tenant disputes, rent regulation, eviction, repairs. It had some good

ideas in it but there was a lot of concern as to whether or not the province had the power to set it up and to take power away from federally appointed judges and give it to provincially appointed officials. An application was made to the Ontario Court of Appeal for their interpretation of what the Constitution said on this question.

One of the questions that they asked was, "Is it within the legislative authority of the Legislative Assembly of Ontario to empower the Residential Tenancy Commission to make an order evicting a tenant as provided for in the Residential Tenancies Act?" They also asked another question about mandatory orders, which isn't really relevant here. But as you're aware, the Constitution divides the legislative powers between the federal and provincial governments, and section 96 of the Constitution provides that, "The Governor General"—that is, the federal government—"shall appoint the judges of the superior, district and county courts in each province."

The Court of Appeal went on to explain that this is a limitation on the authority of a provincial Legislature to confer jurisdiction on provincially constituted tribunals that they appoint the members to, and basically this Legislature can't confer powers that were the same as section 96 courts exercised at the time of Confederation.

The Supreme Court of Canada, we think, took the limitation even more seriously. Mr Justice Dickson wrote about the importance of preventing provinces from interfering with the rights of the federal government under this section. He characterized it as, "What was conceived as a strong constitutional base for national unity through a unitary judicial system would be gravely undermined," if the provinces were allowed to chip away at these powers.

It's our opinion that it doesn't matter whether you call the body the Residential Tenancy Commission or whether you call it the Ontario Court of Justice (Provincial Division). If the members of the body are appointed by the provincial government, they can't take over the functions of a section 96 court.

The Supreme Court said: "Provinces cannot avoid the limitations of section 96 simply by taking a traditional section 96 function, simplifying procedural matters, and then transferring the jurisdiction to a non-section 96 tribunal. If this could be done, section 96 would be stripped of all force and effect."

The court had to decide whether or not the power to make eviction orders was one of those traditional section 96 functions. If it was, the law passing it would be invalid. As you can see on page 6 from two quotes, they said yes, this is exactly the same power that the courts have exercised since before Confederation.

The Court of Appeal characterized section 96 as one of the pillars of our independent judiciary. They felt that laws which give provincial officials this power offend against the limitations contained in section 96 and are ultra vires.

We went back to the situation that we had before this act was enacted and what continues today. The landlord and tenant part of the General Division hears eviction cases. Every day they evict about 100 people. They don't

seem to have any difficulty in getting through this portion of their workload.

If you want to give a provincially appointed judge the power to evict tenants, you certainly can do that. All you have to do is get the people of Canada to agree to a constitutional amendment. But, as you may be aware, it's not the easiest thing in the world and people aren't that keen on having constitutional amendments made, despite how valuable they might be to the operation of the country.

I ask you not to shed too many tears about the problem of not being able to pass this bill, because the bill is not necessary. We've heard a lot of complaints, especially from more conservative elements in our society, that we're being avalanched by floods of useless laws and redundant laws. Well, this is another one of those useless and redundant laws.

As I'm sure you've heard a number of times, subsection 107(1) of the Landlord and Tenant Act provides that where,

"(b) a tenant at any time during the term of the tenancy exercises or carries on, or permits to be exercised or carried on, in or upon the residential premises or any part thereof, any illegal act, trade, business, occupation or calling;

"the landlord may serve on the tenant a notice of termination of the tenancy agreement to be effective not earlier than the twentieth day after the notice is given."

Then we have subsection 107(3), which permits the landlord to apply to court forthwith when such a notice is served, and subsection 107(4) reduces the notice period to 14 days if there have been previous notices.

In our opinion, these provisions are far superior to what Bill 20 proposes. They permit an eviction both where an illegal act is carried on or where it's permitted to be carried on, providing remedies against people who are wilfully blind to what's going on in their home.

Secondly, the existing law permits an eviction for any illegal act, not just for contraventions of two sections of some law that the bill's proponents consider are especially important.

Thirdly, they permit the eviction to proceed immediately upon the illegal act being discovered. You don't have to wait till the offender's sentencing hearing.

Fourthly, we have the "balance of probabilities" as opposed to "beyond a reasonable doubt."

Finally, the decision whether or not to evict somebody is made in a kind of framework where the interests of the community and the interests of the individual are balanced, or attempted to be balanced, and not in a forum where we're setting it up to punish somebody, which is, I think, the major purpose of sentencing court.

We've heard what the problem with the Landlord and Tenant Act remedy is: It requires a landlord to take action to protect people. We run into daily situations where the landlord is unwilling to do anything to protect his or her tenants from any kind of threats to their safety and security.

But I don't think the proper way to address it is to

hand over responsibility for managing the building to the crown attorney's office. Irresponsible landlords hurt tenants when they fail to make repairs, when they fail to carry out maintenance, when they fail to deal with any kind of disruptive behaviour by tenants or outsiders.

1510

There are some rare cases where these are contraventions of sections 4 and 5 of the Narcotic Control Act, but the vast majority of problems have nothing to do with sections 4 and 5 of the Narcotic Control Act. Bill 20 does nothing for that vast majority of problems. In fact it may even encourage landlords to take an irresponsible attitude by saying, "The crown attorney will evict this person if they need to be evicted."

If some bill was to come forward proposing an effective means for tenants to hold landlords responsible for proper management of their building, we would be the first to endorse it, but the crown attorney's job is to prosecute criminals, not to act as substitute property managers.

Finally, I'd like to turn to the unconscionable aspects of the bill. Our opinion is that all this bill is is an attempt to score political points by exploiting a sensational issue without proposing anything of substance to remedy the problems that the issue is supposed to be about.

We believe it's irresponsible of members of the Legislature to act as if there isn't already a provision that's going to deal with the eviction of drug traffickers and then to propose a solution which has no hope of working.

We think substance abuse is an extremely serious topic and we would welcome serious legislative proposals to address it, but we think this bill makes a mockery out of the work that's being done by people who are really concerned with the welfare of substance abusers in their communities.

We also think that with all the talk of the many serious problems this province faces, to be wasting the time of this committee and of our organization and of everybody concerned with this bill is kind of ridiculous. It seems to be occurring just because members of the Legislature are afraid that they're going to be characterized as supporters of the drug menace if they don't stand up and say this thing is not an appropriate piece of legislation.

The part we really find to be unconscionable is the idea of splitting our communities along the lines of property owners and non-property owners and having one standard of punishment for tenants and one standard of punishment for home owners. We in the tenant movement have fought for decades to try to entrench the principle that somebody who rents a home has the same rights as a person who owns their home: They have the same right to vote, they have the same right to use public facilities, they have the same right to privacy, they have the same right to a fair trial. We think the same principle means they should be facing the same kinds of penalties if they're convicted of a crime as those who own property.

Trying to bring back these old distinctions between tenants and land owners which we see being used throughout history to cheat tenants out of their full

participation in society is an unconscionable thing to do. When you look at it in the context of the fact there's existing legislation to do this and there's obvious constitutional flaws in the bill, I think the bill sort of says something very unpleasant about what you think of your constituents and the people you were elected to serve.

We're asking that you put this bill to sleep at this point at this committee and not let it take up further time of the Legislature.

The Chair: Mr Duignan, three minutes per caucus.

Mr Winninger: Are you calling the question?

Mr Noel Duignan (Halton North): Thank you for coming and making, I believe, an excellent presentation, because I believe your presentation outlines some of the difficulties I have with this particular bill. I believe it's just a political statement and doesn't address the real issues that are out there today.

In fact, if you turn to subsection 1(1) of the bill, it states, "If a person is convicted of an offence under section 4 or 5 of the Narcotic Control Act...that was committed in connection with premises that he or she occupies as a tenant," his or her tenancy may be terminated. Do you believe that the words "is connected with" are too vague and probably would violate the Charter of Rights and Freedoms?

Mr Hale: I don't know that I can really say that. I mean, I think that's kind of a criminal law question. I don't do criminal law. I think it is somewhat vague, but if that was all that was wrong with the bill I wouldn't be down here complaining about it.

Mr Duignan: The problem with this bill is that if you had a family living in a tenant situation where the son or daughter is convicted of an offence, in fact the whole family could be turned out in the street. Is that your interpretation of the bill too?

Mr Hale: That's certainly what I think it would accomplish. Metropolitan Toronto Housing Authority has tried to take a very hard line against drug selling in its units, and sometimes what it comes down to is evicting a whole family for the sins of either a son or a boyfriend; you're evicting somebody who has lived there for most of her adult life and has otherwise been a good tenant.

Mr Duignan: Presently, under the Landlord and Tenant Act, if there is a good reason to think that a tenant is trafficking in drugs, the tenant may be evicted under that particular act. Only a civil standard of proof is required, no criminal conviction is needed and no jurisdictional issues arise. I believe the remedy is clearly tied to carrying on an illegal activity on the premises. So in fact the present act goes a long way to deal with that issue, which this bill doesn't because this bill could tie something up in the courts for one heck of a long time.

Mr Hale: For all the reasons I've stated, I think that the present provisions are much more effective in dealing with problem tenants who break the law, including the Narcotic Control Act, than this would ever be.

Mr Callahan: Mr Hale, I raised your point about families being thrown out but you deal with this every day. How many drug traffickers have been evicted from residential tenancies that you're aware of?

Mr Hale: I have actually no idea.

Mr Callahan: You see, I'm not, I suppose, as suspicious as you are of Mr Runciman's reasons for doing this. I think when you're dealing with drug traffickers you're dealing with guns, you're dealing with the obtaining of evidence which is very dangerous because you have to turn in the guy who's the drug dealer next door and suffer the possibility of being shot yourself. It's a very frightening experience. It's a little different than prostitution or damaging the property or having too many cats or dogs. I think you can have those now on the premises.

It's a serious danger and I think it's really something the feds should co-opt. I had suggested earlier that it should be made part of that section that allows for compensation orders to be made by the convicting court. In light of that, what I want to know is, since the courts can make a compensation order and it can be filed as a civil judgement, why is that constitutional when a provision such as that being enacted by the federal Parliament would not be constitutional? I may ask our legislative counsel about that in a second.

Finally, you know what this brief tells me? This brief tells me that this whole country is so hung up with the division of powers that we're prepared to allow our courts to be used ineffectually because the minute you do something, you try to bring something before provincially appointed judges, somebody takes you to the Supreme Court of Canada, as they have here, and says, "No, only a section 96 judge can do that."

If we want to use our judiciary and our judicial resources to their ultimate, maybe this country had better wake up and realize that you can't keep talking about these fine lines of divisions of responsibility or we're going to get nowhere. We're going to have real problems. I think that's what that tells me, this whole thing.

I would like to see something where this whole issue, particularly with drugs—because I think it is an important issue, it's a dangerous issue, it's an issue where people are afraid to report on their neighbours because they could get killed. That's how serious it is.

1520

I'm a lawyer by profession, but I say we're stopped by a lot of this legal mumbo-jumbo and we better start realizing that this is not an exercise in futility. Maybe we can get the federal people to sit up and take notice and realize that this is a significantly important enough issue that should be dealt with in some way within the proceedings of the prosecution for the drug dealer so that these people don't have to testify twice, don't have to take the chance of being rubbed out or removed from the jurisdiction so they can't testify the second time.

I think it's about time we took hold as legislators of what should be done for this society and not keep being bogged down by these artificial things. I hate to say the Constitution is artificial; it's not. But certainly section 96 judges in the times of 1867 never envisaged crack cocaine, heroin, speed and all the rest of this stuff, or guns and Uzis and all the rest of it.

I think maybe it's time we sent a message to our

counterparts that maybe this is a matter that Mr Runciman may not succeed in doing provincially but it's certainly something we should be looking at federally because I think it's necessary.

Mr Hale: If I don't raise it now, if this thing got enacted—

Mr Callahan: I agree. It's a waste of time. Why waste taxpayers' money in having it constitutionally challenged? I agree with you. I'm not disagreeing.

Mr Hale: By saying I don't know how many drug dealers get evicted, I didn't mean that there weren't any. I think there's a substantial number of them that do get evicted but the main evidence that is used to evict these people isn't the little old lady next door; it's the police officer who did the raid on the house. It's the police officer who is getting paid to come to criminal court and getting paid to come to civil court if that's what's necessary.

I don't buy this argument that the rest of the poor tenants are cowering in fear. The police officers come and give the evidence and the person is out. A lot of times when they know that they've been convicted or that the police have them pretty well nailed, it may not even take an eviction application; it may just take an eviction notice because they're probably well aware.

I just have to also comment that the big-time drug dealers that we imagine driving around in their Ferraris and Mercedes-Benzes, presumably these people can scrape the resources together to buy a house or a condominium somewhere and we're not doing anything about them. I think if you're talking about terminating tenancies, you're talking about fairly small-time people. Although they may be destructive in their own little area, you're not getting at the root of the problem.

Mr Runciman: There's a brief comment, no questions. There's an old saying that I used once in the Legislature, never get into a peeing contest with a skunk, and I think that's appropriate today.

Mr Hale: Is he talking about me, Mr Chairman?

Mr Runciman: At our political retreat we discussed our treatment as politicians with witnesses who appear before us. I'm obviously offended by the tone of this presentation. It's very nasty—political overtones. He's questioning not only my motives but the motives of every member of the Legislature who voted for this.

I don't mind members or I don't mind witnesses having strong feelings about an issue, but certainly I don't think the approach this witness has taken today is appropriate at all.

Mr Hale: I'm sorry you feel that way.

Mr Jackson: I guess the bottom line is all three political parties offered support for this bill or it wouldn't be before the committee.

Mr Hale: I think my comments apply to all of them then, because I don't think that it's an honest response to the problem that you claim to be trying to deal with.

Mr Jackson: Can I ask you then what you mean on page 11 when you say, "the work being done by people who are truly concerned with the welfare of substance

abusers and their communities." I think we're generally familiar with that work, but what work is being done to protect those families who are contacting members of Parliament to say, "How do we make our communities safer?"

I don't want to get into the social contract and less policing, less community-based policing, less foot patrols, less interactive police work. That's not what this is about here today, but surely someone in your capacity, who's an advocate for tenants' rights, has to be as equally concerned about those tenants who are breaking the law as you are with those tenants who are concerned about the safety because they're complying with the law.

I understand your mandate is to respond as a lawyer for all tenants whether they're breaking the law or not. That's not the issue we're dealing with here. We're dealing with those families we're trying to protect, who are reaching out to us.

Mr Hale: First, I don't think that proper resources are being granted to tenant communities to organize themselves, to protect their own interests.

Mr Jackson: How would they protect themselves?

Mr Hale: I think having tenant associations that have some kind of authority and clout independent from the landlord is one reason.

Mr Jackson: Fine. So they say that. They have the authority now to say that tenants A, B and C are breaking the law and will they contact the police. In your capacity as a clinic, you have tenants who obviously approach you and say: "This is the nightmare going on in our block of units. What can you do as our legal advocate? What can you do to help us?"

What do you say to tenants who have had a gunshot go through a room and end up in their apartment and they're living in fear? This is going on. What do you tell a tenant who comes to you with that problem? You certainly don't give them a lecture on empowerment and new models of involvement.

Mr Hale: I haven't had that particular question asked of me, but if I did—

Mr Jackson: You haven't?

Mr Hale: I think the perception of the amount of gun use in this country is influenced by things coming from south of the border. I will not deny that there are guns going off in the city from time to time, but I haven't had the experience. If I did, I would encourage those people to contact the police. I'm sure the police would be extremely interested and would not just leave these people out in the middle of nowhere.

One of the problems we see is that sometimes these problems are perceived by the police to just be disputes between neighbours and aren't problems that the police have to deal with. Sometimes you can invoke the magic words "drugs" and "guns," and maybe the police will become interested, but a lot of times the police consider that this is some dispute between tenants and they're not interested in coming. When they do, I think that's the appropriate place.

The landlord shouldn't have the power to search somebody's home to determine whether they are in

possession of illegal drugs. We give that power to the police and the police have to take people's complaints seriously. If the police aren't responding to tenants' cries for help, I don't know why they're not.

I think this is a matter that should be taken up at the police services board if people aren't getting proper service, because tenants certainly are paying their share of property taxes to pay the salaries of the police officers who are supposed to be protecting them. So I don't see why your constituents aren't getting the protection they deserve.

Mr Jackson: I wanted to ask a question of research, if I may. It was on the point of the merging of Civil and Criminal Code activities. I understand this is currently occurring in Quebec. Because of the Civil Code influences, I know it's occurring on various criminal offences where the Civil and the Criminal Code proceed in tandem. That is occurring in Quebec today.

I wonder if we could make an inquiry to see if something similar to that is dealing with the issue around eviction, because I know it's occurring with rapes, assaults and various other things. It's also contained in my Victims Bill of Rights, which I hope some day this committee will look at.

The Chair: Mr Hale, thank you for coming today. We appreciate your taking the time to do that.

Ms Margaret H. Harrington (Niagara Falls): Mr Chair, I object to one member of the committee calling the witness a skunk. I don't think that's appropriate.

BATHURST QUAY RESIDENTS CONCERNED

Ms Fiona Stewart: Good afternoon. My name is Fiona Stewart. I'm here today to represent the Bathurst Quay Residents Concerned. We're a group of residents who live on the Bathurst Quay. For those of you who don't know what the Bathurst Quay is, it's a small parcel of land that is made up entirely of social housing projects, either co-ops or Cityhome. There are no private landlords presently on the quay, although condominiums are planned to be built. I just wanted to give you a bit of history.

We're very concerned about this legislation.

Mr Anthony Perruzza (Downsview): Whereabouts is it?

Ms Stewart: The Bathurst Quay is across from the Island Airport, so it's at Bathurst and Lakeshore.

I usually don't get the liberty. I know I've given deputations before some of you already this year and I'm getting somewhat, for lack of a better term, deputated out. However, this is the dumbest piece of legislation I have ever given a deputation to.

Mr Winner: Careful. You might be called a name.

Ms Stewart: That's okay; I don't mind. I'm a skunk.

1530

The Chair: Let the deputant speak. Go ahead, please.

Ms Stewart: We are gravely concerned about this legislation. Bathurst Quay has suffered a number of problems since its inception. We recognize that there are drug problems not only in our neighbourhood but in every neighbourhood across this province. Rather than

waste the time and money to pay politicians to sit here today to listen to this bill, we wish you'd put the money into drug prevention. You're wasting everyone's time, and I'm really quite upset about it. That having been said, I will tell you why we're so concerned about this bill.

This bill only covers tenants. I'm a tiny bit afraid to say it doesn't cover people who live in co-ops, because if I say that, gosh, someone's going to make an amendment so that it will. I've heard there was a deputation given previously about tenants not wanting to come forward, who would not give evidence against one of their neighbours. I was in the unfortunate situation at one time where I lived in rented accommodation, and unfortunately for me there was a crack house next door. It wasn't very nice. It kept me up all night.

I didn't have a problem; I would have loved to have gone to court and testified against this person, because I put up with it for almost two years. However, it was in a co-op situation and we deal with things in co-ops a little bit differently. One of the people did leave through their own free will. Our board of directors mediated with the other person and we came up with a solution that has worked. You don't always have to bring the law into these things. Sometimes you do.

Additionally, this legislation smacks of discrimination. I would assume the member who wrote the bill lives in a home that he owns and is not a tenant, because tenants are the only people who are going to suffer through this legislation. Maybe if you covered it to everybody, all those people in Rosedale who have the big bucks who are actually probably the people we should be going after and not somebody who is selling dime bags of things—I'm certainly not promoting or saying that I am in favour of drug abuse. I'm not. But if Kim Campbell can come out and say she smoked pot, well, where did she get hers from?

Mr Callahan: She's history, though.

Ms Stewart: She's history, but I believe her counterpart has also admitted to the use of marijuana, although I think he didn't deny that he didn't think it was illegal at the time.

This legislation will cause so many problems for tenants. For instance, it's not an instant solution. This is a social problem. What do you do? Down at the Quay we've consulted with the police on many occasions and they say, "Evict." Our response is no, we're not going to evict and leave a family behind. I live in 14 Division and I've often said to the community relations officer, "Sure, we'll take the drug problem out of 14 Division and we'll take it over to 51 Division." This is a social problem, for God's sake. People are going to live somewhere.

In fact, if people are worried about taxpayers, here's a good scenario. An 18-year-old man gets arrested. His mother and two younger children live in the accommodation. The whole family gets evicted. She ends up in a women's shelter. The 18-year-old, who perhaps has been found guilty of trafficking, gets a very minimal sentence. He can't even go to the shelter with her. He ends up in a youth shelter, and the younger siblings may very well end up in the custody of CAS because the mother simply cannot cope with all the problems she is facing. Well,

wow, isn't that a nice scenario? What a great way to deal with social problems and what a terrific way to keep taxpayers' dollars down.

I don't know if you're aware of how much it costs to house someone in hostels these days. Most families these days are put out in the motel strip on Kingston Road, and it's a pretty damn expensive bill, not to mention that families shouldn't be living in motels on Kingston Road. So I can't tell you how appalled I am by this legislation.

There are ways to deal with drug problems. I have worked very hard within my own community to help combat drug problems, and I am a firm believer in drug prevention. I work on a committee—not this particular committee but another committee on the Quay—with a woman from the drug prevention office at the city of Toronto. At the community centre, of which I'm a member of the board of management, we have funds that are directed through the city of Toronto for drug prevention.

This bill is so politically opportunistic I find it absolutely appalling. Drugs have become the issue of the 1990s. Elections are coming up, so let's all get on the drug hysteria bandwagon and let's all get the small-time dealers out of neighbourhoods, because you can be assured that people who are the big-time drug dealers are living in fancy neighbourhoods and not in rented accommodation.

You also come into another dilemma with the Condominium Act. With the condominiums, you've got people who own condominiums and then you've got owners who are renting out condominiums. So you've got two different types of tenants or two types of individuals even in a condominium.

I really soul-searched about whether or not coming here today was a complete waste of time, and I actually thought I had better things to do, but then just in case people are really bizarre enough to recommend that this go for third reading I thought, "Well, I will come." I just didn't bother killing any trees in the process. Therefore, you will not find anything in writing. I would strongly urge the committee to drop this bill and concentrate on the prevention level. That's about all I have to say.

Mr Alvin Curling (Scarborough North): One of the things I prize in this democratic process is that we can all put our case forward, respecting each other. I don't really believe in taunting about being stupid and what have you, because I have never seen a suggestion that is stupid, really. I think people have their view to put forward. I don't agree, of course, with most of the things that the Tories said and furthermore with many things that the NDP has done, but it's a matter of respect for all that.

But I could ask you this question: With the drug situation—I'm talking about the criminal element of it; I'm not talking about the preventive aspect of it—is there a concern about the criminal element of drugs within residences?

Ms Stewart: With the residents of my community?

Mr Curling: Any community, because this bill is not Bathurst Quay legislation.

Ms Stewart: I can only speak about my own com-

munity. I'm not willing to speak about other communities, because I don't live in them. I do live in a very densely populated community with a large number of subsidized units, and I can tell you the experiences that I've witnessed over the last year.

Once I saw someone make a drug deal. So I went up to a police officer with a friend, and I said to him, "Oh, there's someone making a drug deal over there." He said, "Oh, I'll report it to major crimes." While that person could have been arrested at the time, we were not being served. It was what they call a scout car, a marked car, and they would not get involved in the situation. They just simply were going to refer it.

I know that the police association is speaking tomorrow, and what I strongly favour is community policing, because in my neighbourhood we have a lot of racial tension and there's a lot of discrimination, and people are afraid of the police.

Mr Curling: But you haven't answered my question. Is the drug activity high or low in your community?

Ms Stewart: I walk my dog every night. I've seen one drug deal in five years.

Mr Curling: So, no, you don't have high drug activity.

Ms Stewart: No, I'm not saying that. I think a lot of it goes on behind closed doors.

Mr Curling: You don't know?

Ms Stewart: I don't know.

The Chair: I have Mr Callahan on the list as well.

Mr Callahan: You've raised—I'm sorry, go ahead. I had the last round.

The Chair: Mr Curling, just a reminder, that's all. Go ahead if you want to continue.

Mr Callahan: Go ahead, Alvin, use it all.

Mr Curling: Well, thanks.

Mr Runciman: He wants to draw a picture for you.

Mr Perruzza: Please do. Paint it in simple colours.

1540

Mr Curling: I really can't go over it again because you just woke up, so therefore the fact is that I was asking really—I think you've answered that you don't know; I'll go as far as you don't know if there is a crime problem about drugs in your community. You say that you saw one and that even when you reported it, the police didn't take a serious approach to this.

Ms Stewart: That's why, as I said, I'd like to see community policing.

Mr Curling: You can't speak about any other area, to say there is a—

Ms Stewart: I'm speaking for myself. I can speak in terms of I've been involved in housing for over 10 years now and I've managed large properties in the inner city. How seriously were drugs an issue? I've managed both private non-profits and cooperatives. In co-ops, we tended not to bring the police in a lot of the time because we tended to see it as a social issue rather than—yes, we saw it as a criminal issue but we wanted to resolve it in some way that made everyone's life better.

When I managed a private non-profit, I saw a huge amount of drug abuse, of drug dealing, and crack cocaine terrifies me. I want to say that our organization agrees with the Tenant Advocacy Group in terms of we know there'll be charter challenges over this. We also agree with the submissions that will be given by the Centre of Equality Rights in Accommodation and the Federation of Metro Tenants' Associations.

Mr Curling: Time doesn't permit me, really, but when I was the Minister of Housing I had the opportunity to go to many of these places, and many of the tenants indicated to me the fear of living in areas, especially quite a few areas, where drugs were being trafficked in the sense that it created a lot of criminal elements coming from outside, with guns and what have you.

I think what the bill, which I don't agree with, is trying to do is to make sure that this kind of situation is stopped. As I said, I don't agree in what it does because it can be rather disruptive to families and what have you. I don't want to get into that; I just wanted you to have responded to whether you think basically that there is a high rate of drug trafficking with guns and a lot of criminal element there, but you seem to say that you don't have much concern, that there's not much concern in your area.

Ms Harrington: Count on Alvin to fill in the time.

Mr Curling: I presume I'll get my opportunity too, like everybody else.

Mr Perruzza: I don't understand.

Mr Curling: No, you wouldn't.

Mr Perruzza: If anyone else in the room understands the point, please convey that.

Ms Stewart: All I can say is that in my neighbourhood I have become involved very much with the youth, very much with the community. I walk a dog every night. I don't see a lot of it. I'm not saying it isn't there, but it is not affecting my reasonable enjoyment as someone who lives in the community.

Mr Runciman: Just a quick couple of questions, Mr Chairman: Again, I'm not going to call this witness a name and I didn't directly call the previous witness a name, but I have difficulty understanding why witnesses who want to appear here and make their concerns known to the committee about any legislation have to use certain language, calling it dumb or whatever. I don't think that's productive in any way, shape or form. But the witness has done it; so be it. I don't know if she has any political motivation and I'm not going to get into that.

She did mention something about people being afraid of police in her area. You don't know how significant the drug problem is, but you seem to have a handle on this one. Why are people afraid of police in your area? What's the reason for that?

Ms Stewart: To be blunt, I live in 14 Division; 14 Division has the highest rate in Metro of shooting black youth. Our area happens to be extremely multicultural. There are a lot of black youth in our area. They are harassed a lot by not only the police but by a private security firm that has been hired by Cityhome. I have witnessed this.

I live in a townhouse on Bishop Tutu Boulevard. If you're asking why they're afraid of the police, one night one of the hired cops from Intelligarde—I heard this terrible scream at 2 o'clock in the morning and a black youth was running down the street being chased by a security guard and the security guard—I can't even repeat the language that he used because I'm sure you would find it offensive, but it was—

Mr Callahan: I think this witness should be advised, and I do it for your own benefit, that we have a privilege you don't. The privilege is that if you say something, you could get yourself into trouble. That's my only reason for interjecting. I don't want to cause you a problem, but I feel it's fair to bring that to the—

Ms Stewart: I've given the same deputation before the police services board. I don't have a problem with it. I know that Dudley Laws was charged with—

Mr Callahan: But you've gone into things beyond that: security. I'm just saying it for your benefit.

The Chair: Mr Callahan is simply making some remarks. You obviously are probably familiar with it.

Ms Stewart: If anyone wants to charge me with anything, they can.

Interjection.

The Chair: Getting back to the point that I think she was responding to—Mr Duignan, with respect to this?

Mr Duignan: I agree with Mr Callahan that we should caution the witness to the fact that she doesn't have the same privileges as we do.

Ms Stewart: I'm aware I don't have the privileges, but they're a matter of public record and in fact all these events have appeared in the media, so I don't have a problem with it. I feel quite comfortable that in no way can anyone bring any sort of civil action against me.

The Chair: That's fine. Mr One final question?

Mr Runciman: Simply to say it's interesting to hear the witness equate herself with Dudley Laws and to inform the committee that the police in her area are more of a problem than the drug dealers.

Ms Stewart: I want to clarify. I did not say that the police in my area are more of a problem. I am saying that there is a great deal of distrust between the youth in the area I live in and their parents, as a point of clarification. What I want to see is community policing where people build trusting relationships. In my community, that's not happening.

Mr Runciman: There was a clear implication that I heard, that the police in her area are racist and that there's no drug problem, as far as she's aware. She's certainly never seen it in person or is aware of it.

Mr Perruzza: Come on, Bob. That's not what she said.

Ms Stewart: That's not what I said. In fact, I said I once approached a squad car with someone and asked them to do something about it and they would not.

Mr Runciman: Give us names.

Ms Harrington: I just wanted to commend you for coming here and taking the time you thought would not

be worthwhile, for coming and saying it as you see it, as it is in your opinion. I really do appreciate that.

I want to go back to the issue of there's one standard for home owners and another for tenants. I just wanted to underline again what this legislation would do. It's not worth talking about in some respects, but if this law was to be enforced, would you see that there would be problems with it in that respect?

Ms Stewart: What—

Ms Harrington: The Charter of Rights, treating people who are home owners differently than tenants.

Ms Stewart: I'm not an expert on the charter issues. I am aware that there are two sections of the charter which may apply because tenants are a disadvantaged group. If this bill did pass, then obviously there would be charter challenges, yes.

The Chair: Ms Stewart, thank you for taking the time to come and give your presentation to this committee.

CENTRE FOR EQUALITY RIGHTS
IN ACCOMMODATION

Mr Bruce Porter: I have with me Leilani Farha, who is a student at law with the Centre for Equality Rights in Accommodation and will be joining me in making the presentation.

We may be a little short of copies of our brief but I understand there are a number that are on their way and should be here imminently. I hope all the members have a copy of our brief.

We've at the beginning outlined who CERA, the Centre for Equality Rights in Accommodation, is. I know that most of you will be familiar with us. We were before this committee a couple of weeks ago on its investigations into the Ontario Human Rights Commission. As most of you will know from the information we provided at that time, we are generally extremely busy with cases before the Human Rights Commission. We represent about three quarters to perhaps as high as 90% of human rights claimants across the province who deal with discrimination in housing.

We are also active in the area of international law and human rights in housing. We've worked with the Habitat International coalition, which is the international organization of non-governmental organizations that works to advocate for housing rights around the world.

We were recently privileged to be part of the intervention before the United Nations Committee on Economic, Social and Cultural Rights into hearings into Canada's compliance with Article XI of the International Covenant on Economic, Social and Cultural Rights, which deals with the right to an adequate standard of living and the right to housing. I'm sure you'll be familiar with the concluding observations of the committee that were released last spring and were in some areas quite critical of Canada's record in the area of human rights related to poverty and housing.

1550

We wanted to take time out of our busy schedule, however, to address you on Bill 20. We perhaps agree with earlier deputants that we hoped, when we saw it, that it wasn't something that was going to be considered

too seriously by the Legislature. However, we value the opportunity to talk about the human rights implications of this kind of legislation, because we don't see these issues as being confined to this bill alone.

We're increasingly concerned at CERA about a growing complacency about using eviction as a means of social control and as punishment. As you know, a landlord and the courts can already do that under the Landlord and Tenant Act. Under the illegal activities provision, a person and his or her family can be evicted merely because of some illegal activity performed in connection with the premises.

What we see in this bill, although we see it as a fundamental human rights violation, in a way clarifies some of the problems we already have under the Landlord and Tenant Act. When we come to our recommendations you'll see that our recommendation is not only to not pass Bill 20, but it's also to reconsider the illegal act provision within the Landlord and Tenant Act.

In CERA's view, in its structure and design, Bill 20 is a fundamental violation of internationally recognized human rights. It's inappropriate and unlawful to use eviction as a form of punishment for criminal activity. While the bill may be well intentioned, we would urge the committee to reject it on the basis that it does violate fundamental rights, because the objective of Bill 20, it would seem to us, has to be seen as being punitive despite its title and despite perhaps the intentions of the drafters.

There is nothing in the bill, apart from the title, that makes any reference to the rights or interests of other tenants in the building. Merely upon conviction, someone and their household can have, in addition to the criminal sanction, an additional penalty, that of being evicted from the premises, so in its construction and effects it's essentially punitive. Home owners, condominium owners and residents of co-ops would be immune, of course, from this additional penalty.

Clearly, you have concerns about the implications of criminal activity on neighbouring tenants. But isn't that a concern which is shared in all criminal activity? If somebody is guilty of assault or carrying a concealed weapon, that has implications for neighbours. It is a function of criminal law to ensure that people aren't allowed to continue to carry on that criminal activity. It's not the function of criminal law to impose an additional remedy for neighbours by kicking the person out of the community. That's clearly to overstep the bounds of general human rights protections.

It's in this sense that, in confusing the two legal issues of penalty for criminal activity and remedy for infringements of rights of tenants, the human rights violations occur in Bill 20. By merging these two arenas of criminal and landlord and tenant law we really end up having the sole criterion for eviction being one of having performed illegal activities.

It's accepted in the international community that eviction should never be used as a penalty for a crime. When we hear from time to time of states or communities destroying homes of criminally accused or of evicting from their community families of persons who have been

convicted of crimes, these are considered in the international community to be fundamental violations of human rights, and for a number of reasons.

The first is that using eviction as a penalty is a violation of the right to equality, which is recognized in article 26 of the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights, and of course, also in our Charter of Rights and Freedoms.

Eviction as a punishment exploits the vulnerability of those who do not own property, either because they are tenants, as in Bill 20, or in other countries because they are living in squatters' settlements or in occupied territories. It is a fundamental principle of criminal law that any punishment must be one which potentially affects all persons, not just one vulnerable class of persons.

Second, eviction is a punishment that will more dramatically affect the family of a person convicted of criminal activity than the convicted person himself or herself. Under article 17 of the International Covenant on Civil and Political Rights, it is the function of the law to protect citizens from the unlawful interference with family and home, not to perpetrate this kind of interference. Penalizing family for the misdemeanour of individual members is a hallmark of the most repressive regimes.

Third, eviction as a punishment is considered in international law to be contrary to the fundamental right to housing, as enshrined in the Universal Declaration of Human Rights, in the International Covenant on Economic, Social and Cultural Rights and in many other documents. To use eviction as a punishment is equivalent in international law to depriving convicted persons and their families of other fundamental necessities, such as food, clothing or medical care.

The UN Commission on Human Rights resolution on forced evictions, which was passed last year, was seen as a dramatic recognition by the highest international human rights body of the importance of protecting citizens from forced evictions and from the involuntary removal of persons, families or groups from their homes, which the UN commission noted "intensifies social conflict and inequality and invariably affects the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society." The commission noted, in addition, that discrimination based on race, ethnic origin, nationality, gender, social and economic and other status is often the actual motive behind forced evictions.

Leilani is now going to talk about the rights under the Canadian Charter of Rights and Freedoms.

Ms Leilani Farha: Currently, the Landlord and Tenant Act allows for eviction when the reasonable enjoyment of the premises by other tenants is infringed by the activities of a tenant or by any person in the tenant's unit. This, in our view, is the only appropriate standard to apply to eviction for inappropriate activity. The focus must be on the effect of such activity on the rights of other tenants. Eviction, in other words, must be solely remedial, rather than punitive.

The Landlord and Tenant Act, in our view, already steps over that important line between remedial and punitive measures, as it allows for eviction for illegal activity carried on on the premises in clause 107(1)(b) without any requirement that the activity be shown to infringe the rights of other tenants to their reasonable enjoyment of their own premises.

The following is an example of how clause 107(1)(b) can play itself out. Two years ago, a mother and her three children were being evicted from the Metropolitan Toronto Housing Authority after the woman's husband had been convicted of selling a small amount of marijuana to a friend in an adjoining parking lot. The husband had paid the price for his crime with three months in jail. Yet the mother, who had always maintained a strict no-drugs rule in her apartment, and her three children, faced eviction. The landlord had served notice under clause 107(1)(b) that their tenancy was terminated because of illegal activity carried on on the premises. They were concerned that if they were evicted from MTHA, they would be unable to secure any alternative affordable accommodation, that they would be barred from all public housing in Ontario and would be rejected by virtually all private landlords.

CERA and a number of other organizations advanced the argument in that case that the provisions in the Landlord and Tenant Act that allow a person to be evicted for engaging in illegal activities was unconstitutional as it imposed an additional penalty for criminal activity on tenants, a penalty not imposed on condominium owners, home owners or others. CERA and the other organizations also argued that this section of the Landlord and Tenant Act contravened the Human Rights Code because it arbitrarily penalizes family members for actions of one family member. That case was withdrawn after the tenant found another apartment. However, we believe that the constitutionality and legality of this section of the Landlord and Tenant Act is still very much in question.

1600

Bill 20 takes the present provision of the Landlord and Tenant Act, clause 107(1)(b), and carries it significantly further. It continues to extend the penalty to the family of the persons convicted.

On its construction, this can be proven: Subsections 1(2) and (4) of bill 20 indicate that either a prosecutor or a landlord, and I quote, can "terminate the tenancy," and subsection (6) grants the court the power to "order that the tenancy be terminated and that a writ of possession be issued."

In this way, the bill does not specify that only the convicted person shall be removed from the premises, but rather allows the prosecutor, the landlord or the court to rescind the entire tenancy. An example of this would be that if a family is renting an apartment and a son is caught selling some marijuana to a friend in the basement during a party, the entire family would be evicted from the apartment, if not by the landlord, then by the prosecutor.

In this way, Bill 20 can be seen to discriminate directly against families, and discrimination against families is

contrary to the Human Rights Code and the Charter of Rights. The negative effects on children and families in having to move are well documented. Relocation can disrupt many aspects of a child's life, removing a child from his or her secure home environment, friends, family members, day care, school.

Bill 20 punishes innocent family members and co-tenants for the illegal actions of one individual. In so doing, Bill 20 results in disadvantaging the very people it is supposed to protect. The fate of such families contrasts with the situation of a drug trafficker running a drug ring from his luxurious condominium. As a property owner, this individual is protected by his prosperity and would be exempted from any eviction procedures established by Bill 20.

We believe that the unequal treatment of tenants is contrary to section 15 of the charter, the equality rights provision. As Ms Stewart already referred to, societies often react to any current plague by victimizing disadvantaged groups. When we begin to use social problems to justify creating special punishments for relatively disadvantaged groups, we are being discriminatory in the worst sense.

Targeting those who are disadvantaged by tenancy relationships for punitive measures while exempting those who are more privileged is clearly discriminatory logic and behaviour. Bill 20 reacts to the current problem of drug abuse by further entrenching existing inequality and discriminatory behaviour. This is clearly a violation of the equality rights protection in the Canadian Charter of Rights.

Section 15 of the charter guarantees that "every individual is equal before and under the law." The court has said that the purpose of section 15 is "remedying or preventing discrimination against groups suffering social, political and legal disadvantage in our society."

It was also determined in the Andrews case that in order to bring a charter challenge under section 15 only two criteria must be met. First, the applicant, and in this case it would be the tenant, must demonstrate that he or she is a member of a disadvantaged group. Second, it must be shown that the legislation is discriminatory in either its purpose or its effects.

Tenants as a disadvantaged group under the charter: Although tenants are not specifically enumerated in subsection 15(1) of the charter, they can be considered an "analogous group" as they have clearly experienced "social, political and legal disadvantage and are vulnerable to political and social prejudice."

Although tenants may not generally have been considered a group subject to discrimination, this is belied by their actual treatment throughout history and into the present. Tenants were denied the vote by property qualification well after women and people of colour were enfranchised. These property qualifications meant that many women and people of colour were disqualified as non-owners from voting even after gender and race were formally removed as barriers.

Up until the early 1960s, municipal referenda on important issues of public transportation were often

restricted to home owners. Municipal politicians have often stated that they value the viewpoint of home owners, who they say have a stake in the community, over those of tenants. Indeed, the legacy of the denial of suffrage, as with other disadvantaged groups, is a relatively low voter turnout among tenants in municipal elections.

Recent case law supports this recognition of tenants as a disadvantaged group. In a recent decision by the Nova Scotia Supreme Court, tenants of public housing were recognized as a protected group under the charter. This is the Sparks case. It is a particularly significant case in that the court recognized that differential treatment of tenants in public housing is a form of direct discrimination. The judge in that case found that "low income, in most cases verging on or below poverty, is undeniably a characteristic shared by all residents of public housing." Hallett went on to determine that this characteristic, among others, establishes that such tenants are historically disadvantaged and that they are a group analogous to those persons specifically referred to in subsection 15(1) of the Charter.

Now if this determination can be made about tenants in public housing, it follows that the same determination can be made about tenants in general. Statistics indicate that people in receipt of social assistance comprise 36% of the private rental market.

The disparity in income between home owners and renters has dramatically increased over the last 10 years, as demonstrated in the appendix in a bar graph. These statistics indicate that a common characteristic among the majority of tenants is low income and poverty. This is a characteristic that is not shared by home owners as a group. As decided in the Sparks case, poverty as a shared characteristic, coupled with historical disadvantage, renders tenants a disadvantaged group under section 15 of the charter.

I'll pass now quickly to the second criteria required in order to make a section 15 argument; that is, that Bill 20 has a discriminatory effect. Discrimination has been defined as "a distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed on others."

Bill 20 is *prima facie* discriminatory as it treats tenants and owners disparately. The extremely short notice of termination provided to a convicted tenant and his or her family places them in an untenable situation where they are forced to secure accommodation quickly in a market that is unreceptive to low-income individuals or families. The end result is legislation that punishes the poor and hence compounds their disadvantage.

I pass back to Mr Porter.

Mr Porter: Just quickly, we believe there are a couple of other constitutional problems with using eviction as a form of penalty for criminal activity. We believe that housing is so fundamentally linked with security of the person that to use eviction as a penalty is inherently contrary to the guarantees in section 7 of the charter on security of the person, which one can only be

deprived of "in accordance with the principles of fundamental justice."

In our view, it's fundamentally unjust to be deprived of such an essential necessity, as it would be if we deprived criminals of other necessities. Certainly, it's contrary to the principles of fundamental justice for innocent members of families or households to suffer eviction because of a misdemeanour of one of the members of the household.

The extension of this kind of draconian measure is absurd but worth considering: that it's contrary to all internationally recognized principles of justice that somebody innocent should be penalized for the behaviour of a relative or a friend.

There's also the problem of the severity of this kind of penalty. I'm not sure that people have really grappled with just how severe a penalty it is for a family living in MTHA, for example, to be forced out. They are quite possibly not going to be able to find any other accommodation, and landlords are getting better now at checking references and requiring all sorts of things before they rent to a family. You're dealing with a family that's already suffering severe disadvantage, then finding itself in a market which may completely exclude it. You're looking at implications that have been well documented, such as homelessness, having to give up the children to the children's aid society and so forth. This is pretty severe stuff.

The other problem with Bill 20 is its vagueness. It raises procedural questions about how much notice is required, and it's really unclear in what circumstances the prosecutor would make the application and in what circumstances the landlord would make the application.

In general, we feel that even if we got over the first hurdle of justifying the use of eviction as some sort of penalty, it would certainly be required that there be very clear and strong procedural guarantees to ensure that this is done in accordance with the principles of fundamental justice.

1610

The Vice-Chair (Ms Margaret H. Harrington): If you'd like to have questions from the members of the committee, we don't have a lot of time left.

Mr Porter: Just to wind up, I think other deputants have mentioned the problem of the section 96 courts and the fact that this is probably unconstitutional on jurisdictional grounds as well.

Finally, our recommendations are that Bill 20 be withdrawn; that clause 107(1)(c) of the Landlord and Tenant Act providing for eviction for illegal activity be repealed; and that the Legislature adopt as public policy that eviction should never be used as a criminal penalty.

Mr Runciman: I want to say thank you to the presenters. It's nice to hear someone opposed who can say so without being nasty or imputing motives and I appreciate that very much.

I want to ask you a question. You have an example in here in respect to a case, and you've mentioned it in your presentation, where you were going to launch a charter challenge, I believe, and then the tenant found other

accommodation so you withdrew. Has that been the only case in Metro where you've been faced with this sort of situation, following a conviction, of a landlord attempting to use that for grounds for eviction? You mention this as an example to present your case, but it seems passing strange to me that there haven't been other situations you could have pursued along those lines.

Mr Porter: CERA doesn't generally deal with landlord and tenant issues. Those are referred. It was only because of a number of circumstances that we were told about this case and we were actually involved. I guess actually it was that she called CERA first and we referred her to Metro Tenants Legal Services, but made the suggestion that there was a constitutional issue. We then got directly involved as intervenors rather than as representing her. I know other organizations have those kinds of cases more frequently, and we've suggested to them that there's a constitutional argument that should be made.

Mr Runciman: But no one's cared enough to pursue it beyond that point, I gather. I just wonder. I hear your argument and I understand what you're saying, but I think most Canadians have a problem with this whole question of the argument of rights in respect to violators. You're talking about targeting the disadvantaged, but I would disagree, because it seems to me that the families and children you're talking about are victimized the moment the drugs enter into that home.

I wonder if you have any appreciation of how serious the problem is out there and if you have any answers other than picking this one apart, because I know later we'll hear testimony from police officers, for example, about shooting galleries, about people renting three and four units in an apartment building and using them for cooking the drugs and cooking their deals and what have you.

As I said, there are all sorts of people who are being victimized by this process and who are certainly disadvantaged. I guess I would like to hear you address that question as well in terms of the rights of society at large.

The Vice-Chair: Unfortunately, your time is up.

Mr Mike Cooper (Kitchener-Wilmot): I'd like to thank you for your presentation, but I have a little concern about clause 107(1)(c) of the Landlord and Tenant Act. What about the rights of the people who are living in such close proximity? You're talking about not evicting anybody, but especially when you're talking about drugs, if you're living right next door—and usually it is right next door; it's not like a private dwelling where there's separation—what about the rights of the tenants who are living so close? That's why the provision is in there. How would you address that when you say no evictions at all?

Ms Farha: We're not saying no evictions at all. Our position is that what is adequate is to look at whether other tenants' reasonable enjoyment of their premises is being infringed.

Tenant A is engaged in lots of illegal drug activity. Tenant B hears noise and sees needles scattered on the floor outside of his or her apartment. Tenant B then could

go forward with a complaint to the landlord indicating that tenant A's activities are disturbing his or her reasonable enjoyment of his or her premises. The actual drug activity isn't so important as whether or not the effect of the activity is to disrupt someone else's enjoyment of their property.

Mr Cooper: That part I could agree with. The part I agreed with you on originally was after conviction, because that usually means the person has been separated from the family, and there should be no proceedings taken against the family who are still there. I agree with that. The way you made it sound was that you were in favour of the criminal and nothing for the other tenants or the victims who were close by.

The Vice-Chair: I'm afraid your time is up.

Mr Callahan: Doesn't that in fact happen if you leave that section in place, that you've evicted the entire family for the drug needles you find outside? Doesn't that fly in the face of your major argument, which is one I raised before you people came in, that I was concerned about this legislation in that it did punish more than just the violator? Maybe you can think about that.

What interests me is you say Bill 20 punishes innocent family members and co-tenants. There are lots of pieces of legislation that do that. For instance, the minimum one-year suspension for driving with over 80 milligrams, that doesn't just punish the driver of the truck, that punishes the entire family, because the innocent who had nothing to do with it have to make their way in life without that person's salary. Nobody's ever challenged that. Why is that? Does that not contravene all of the sections you're referring to here, 7 and 15? Maybe not subsection 15(1), but certainly section 7. Have you ever thought about that?

Mr Porter: Certainly. Even putting somebody in jail may result in the family not being able to maintain the tenancy, but there it's an indirect consequence. To actually have a direct option available to the prosecutor, where the family is evicted by reason of the action of the court, is different from the family being placed in a certain circumstance because one of their providers is in jail.

Mr Callahan: We had eliminated that. I think Mr Runciman recognized that might be something we'd have to change in the act.

I've addressed the question of this being a matter that the feds use, the same provision they use to provide a civil judgement to a person who has received injuries or property damage. They can apply in the sentencing process to get that and to avoid having to go to the courts which are already backlogged unbelievably. What would you think of that? Do you think that would be unconstitutional?

Mr Porter: I'm not sure of the specifics of it, because I haven't heard it described in any detail, but in general we're a bit nervous about blurring the civil and criminal in this particular area. We think it tends to make more groups that are vulnerable to discrimination within their community to be more vulnerable.

The Vice-Chair: Thank you very much for your

presentation. I'm afraid our time has finished.

Mr Runciman: On a point of order, Madam Chair: Just a question through you to the clerk. I know this is short notice, but are the witnesses, prior to their appearance here, being provided with copies of the amendments that I've tabled?

Clerk of the Committee (Ms Donna Bryce): The ones who are here this afternoon, no, but my office is endeavouring to get them to the people tomorrow. I have extras at the back, so some people may have picked them up.

Mr Runciman: Hopefully, they address some of the concerns that are being raised.

FEDERATION OF METRO TENANTS' ASSOCIATIONS

Ms Deborah Wandal: Good afternoon. I'm Deborah Wandal from the Federation of Metro Tenants' Associations. I have brought a small presentation which I hope you have in front of you.

Just a word of introduction about the federation: We are a grass-roots tenants' organization. We have several thousand members across the greater Toronto area and we have been in existence for over 20 years. We help tenants organize in their apartment buildings and in their communities. We do this because we believe that through cooperative and coordinated action, tenants can effectively work to solve their tenancy problems. They can do that within their buildings and they can use their concerted voice to make sure that their concerns are heard in public debate and are heard before all levels of government. We also provide eight hours a day an information hotline to tenants and we get over 7,000 calls a year on that hotline. So we have a very direct access to the problems and issues that tenants are most directly concerned with in these times.

1620

Unfortunately, I haven't been here for a good part of the afternoon so I haven't heard the other presentations. I believe that the unconstitutionality of this bill simply in terms of the provincial jurisdiction to deal with a matter of tenant evictions has been discussed and we won't touch upon that. The organization that presented that, the Tenant Advocacy Group, is an organization the federation itself is a member of.

Although we're somewhat relieved that this bill itself may just be declared ultra vires, we are very concerned. The very fact that we're here today indicates a disturbing level of support for a bill whose focus reveals what we consider to be regressive attitudes and assumptions about tenants and their status.

To us, it is glaringly obvious that this bill is discriminatory in its treatment of tenants. We can only ask why the state in the guise of concerned prosecutors should be so interested in protecting the property of landlords and tenants, but apparently not equally interested in protecting the property of private home owners. Perhaps tenants should be flattered by this. Apparently the state would like to ensure that tenants are living in a safe environment, free from disruptive elements. This is all well and good, but we would think that the state would also be concerned with safeguarding the investments of home

owners who are vulnerable to plummeting property values when drug dealers buy a house down the block.

We question whether tenants should be gratified by the attention this bill places upon them. We think not, because we believe that the discrepancy in the treatment of tenants and home owners that's evidenced by this bill actually reflects reprehensible attitudes about the importance of tenants' rights. Some people clearly believe they can dismiss and ignore tenants' rights to a home and to a place in the community.

It's our impression that this bill is evocative of the mentality that was prevalent in the 1960s when tenants had no right to vote in municipal elections because without property they were not considered to have a stake in the community and therefore not entitled to a voice. They also had no rights with respect to their housing, and those who were unfortunate enough not to own property could not really call any place home.

A lot of work has gone into changing attitudes since then and tenants have fought for and won housing rights. They fought to be recognized as participants in their communities. We now understand that living with dignity is impossible for those who are denied a secure home.

We believe there is absolutely no justification for continuing to make discriminatory distinctions between home owners and tenants, for burdening a tenant trafficker with two punishments while allowing a home owner to return to the security of their home once their sentence is complete simply because they are fortunate enough to be able to own their home.

We are actually appalled at having to be here today to speak to this matter and to review the history of the fight for human rights for nearly 50% of Ontario's population, the right to be treated equally in a society where property values are paramount.

Try to imagine the scenario where citizens who lived in Forest Hill or Rosedale were being thrown out of their homes because of conviction for trafficking or fraud. The difficulty in even conjuring up this kind of scenario highlights the fact that in our society we have never equated this form of punishment with criminal offences. We may ostracize offenders, figuratively placing them beyond the social pale, but we don't literally ban them from their community.

I know that just before me CERA spoke on the official international sanctions against using eviction or expropriation or removal from one's home or homeland as a form of punishment. After a person has paid their debt to society and is entitled to re-enter their community, it is cruel and unusual punishment to take from them the only stability they might have, which is their home. It is no less someone's home just because they don't own it.

We don't believe there's a great deal of substantial, practical benefit to be derived from the procedure that's set out in this bill. The reality is that if a convicted trafficker is living alone and they are incarcerated, in all likelihood they will lose their unit, simply because they will not be able to continue to afford to pay the rent. Contrary to some myth-making, you can evict someone who is in jail.

On the other hand, if the convicted person is living with their family in this unit, why should the family and the children lose their home because of their relative's actions? Why are they to be punished? What is gained, and I think perhaps this is the most significant question in terms of the long-term implications, by destroying this family and putting them on the street? Life on the street doesn't improve conditions for anyone.

We understand from our phone calls and our organizing—we go out to a lot of buildings where drug-dealing and trafficking is a major problem—that it's a serious issue in this society. We believe that an integrated and comprehensive approach to its solution is critical. What this bill doesn't do, though, is deal with the needs of the family, with the need for rehabilitative schemes. It adopts a NIMBY line, a not-in-my-backyard line, of shunting the problem into a different location, creating ghettos where residents are least able to defend themselves.

We believe there's a need for radically new approaches to these problems. Part of this can be done through community development and organizing within buildings, creating networks through which communities can work to achieve their own goals and priorities. We know of a number of communities and a number of buildings that have decided to fight the infiltration of drugs into their neighbourhoods, and they have been successful. Ultimately, however, we don't believe it is the ordinary residents who should have to spearhead this struggle. These are criminal matters and the police should be responding appropriately to these problems.

What is an appropriate response? Perhaps a new type of community policing is necessary, shaped and modelled by the needs of today's communities. The housing forms themselves might dictate the nature of the policing.

Currently this is not happening. While tenants pay and contribute substantially to the police budget through the taxes they pay through their rent, they often don't get the full benefit of services, particularly tenants in high-rise, densely populated, vertical communities.

I understand that in the report Toward the Year 2000, there are substantial discussions around the benefits of foot patrols in certain areas, where the police would be able to get to know the residents in the common areas, in the pedestrian corridors. There might be a possibility there of overcoming the mutual distrust that has developed over the years in many communities.

The communities would also be able to see how the police might be useful to them and responsive to their concerns. They might be able to work together to develop an agenda based on the real needs in the community. The police on the other hand would understand the nuances and the nature of the community and develop sensitivity to it, because they will be working within it and not just be parachuted in.

Without going into any detail, we think this kind of long-term planning is what the municipalities and the Ontario government should be looking at in order to deal with this problem and examine its links with poverty, racism, sexism and lack of equal opportunity in Ontario.

I'd also like to make a few remarks about the current

provisions in the Landlord and Tenant Act. It does, as I'm sure you've heard today, allow for eviction of tenants on the grounds that illegal acts have been committed or have been permitted to be committed by the tenant. Summary applications under the LTA can be initiated without waiting for a conviction. They are quickly processed and the findings are based on a lower civil standard of proof, which is the balance of probabilities, rather than the criminal standard of proof: beyond a reasonable doubt.

To all effects, therefore, this bill is essentially redundant. That said, however, we must also say that the federation has never supported this "illegal act" ground for eviction in the LTA because we believe, as CERA prior to us has stated, that other provisions in the LTA adequately address the acknowledged need to balance the public good, that is, the interests of other tenants, with the rights of the individual.

1630

Substantial interference with reasonable enjoyment of other tenants is a ground for eviction. In proceedings on this ground, the evidence of other tenants regarding how their daily lives are being affected is critical to the landlord's case. Other tenants have a voice, and their interests are weighed against the respondent's interest in remaining in their home. The court weighs all this evidence against a larger social standard: What behaviour or level of disturbance would a reasonable person find acceptable?

We believe that through that measure there is a recognition of some form of social control. The interests and wishes of the other tenants are taken into account and they are all balanced. It's true that there is no system that works perfectly, but no system can be designed to handle worst-case scenarios. If systems were designed with that in mind, we would be living in a police state to ensure that there was minimal risk at all time.

Our final comments have to do with another problem, that we acknowledge, which is that landlords often refuse to meet their obligations under the Landlord and Tenant Act. This is part of the ongoing tensions between landlords and tenants. They do refuse to provide tenants with the safe, healthy and reasonably peaceful environment that tenants are entitled to. But we don't believe the solution to this problem is intervention by the state, as this bill recommends.

As with the whole issue of substance abuse, we believe this issue of landlord-tenant problems and the dynamics between them cannot be addressed by a bill such as this. We need to look at developing a procedural scheme by which tenants could compel landlords to act on "reasonable enjoyment" matters, much as the current section 94 tenant applications force landlords to comply with housing standards.

Such problems require a real familiarity with the broad range of tenant concerns and perspectives. The piecemeal solution in this bill does not redress the long-standing power imbalances which have traditionally defined landlord-tenant relations. Instead, it leaves tenants vulnerable to further intervention by the state and loss of their homes. Thank you.

Mr Winninger: You, and actually the last presenter, raise an interesting issue. If we give a benign interpretation to the direction of this bill, that we want to protect other tenants from the deleterious effects on them of having illegal acts carried out on the premises, if that is the intention, your point is a very legitimate one. One should be able to relate the illegal act to some form of disruption in the lives of other tenants, and if it involves disruption in the lives of other tenants, why do you necessarily need a ground for eviction that just stipulates or provides for the illegal act?

If, on the other hand, you're making something more than a political statement here in this bill, saying, "We're going to get tough on drug trafficking, so tough that we'll take away the very roof over their heads," why is it only addressed to tenants? Why isn't it addressed to freeholders, people who have ownership in property? That's a good question that, hopefully, Mr Runciman will be able to answer at some point, but I'm interested in hearing your comments.

Ms Wandal: There are two aspects to that. First, drawing the distinction between tenants and home owners just doesn't make sense if it really is a determined effort to make sure that there is not a place for a single drug dealer to hide, because they can probably hide a lot more effectively in a comfortable home in the suburbs or on a quiet street than they are able to hide with people all around them. Without getting into where possibly the leaders or the major drug dealers may be, the ones with the most money are in many cases not tenants, so it doesn't even touch those who may be ringleaders or whatever.

The other question is, do we deal with substance abuse, this whole issue, by simply saying, "We are going to make sure these people don't have a place to live?" Is that the way to solve the problem or does that just make the streets more dangerous? Does that just expose more people to the presence of people on the streets who are dealing and creating an unsafe environment?

Mr Winninger: That's a legitimate point, because they have to be somewhere. Even if they don't live somewhere, they have to be somewhere.

Ms Wandal: There are roots to this problem. There are all kinds of implications for those people in the community who may be most directly affected by the substance abuse problem, and it needs to be looked at in terms of dealing with the roots of the problem rather than simply saying, "If we can find one drug dealer, we'll pick him off." They will be replaced. As soon as one gets kicked out, another will replace them, because you're not getting at the essential problems and you're not building strong communities where people feel safe and where they've worked themselves to ensure that their own community is the way they want it to be.

Mr Callahan: If I were either a freeholder or happened to live in a home as opposed to being a tenant, if I had a drug dealer in my family—God forbid, but if I did—surely to God I'd want him or her out of there rather than disrupt the family. Before you came in, I addressed the issue that everybody shouldn't suffer for the actions of the felon, but surely the best thing is to get

them out of there, not just for the neighbours' benefit but also for the family's benefit. What does that person do for the children of that family? What does that person do for the wife in that family?

Going back to your question, I find it interesting, because you kept referring to people who live in these comfortable homes who are not tenants. Just down the hall, this government, through Bill 120, is about to take away the planning rights of elected representatives, is about to turn my neighbourhood and others where people have worked hard to buy a house into a multiple-dwelling area by just the stroke of the pen, and yet you object to the state intervening. Maybe you should object to the state intervening in Bill 120, because it is in fact intervening the other way. I understand your plight and I understand your concerns.

Mr Winninger: On a point of order, Mr Chair: I question whether it's fair and in order to put another bill before the deputant when she has come here specifically to address Bill 20.

Mr Callahan: The deputant smiled, so I'm sure she's familiar with Bill 120. I think everybody is familiar with Bill 120.

Interjections.

The Acting Chair (Mr Mike Cooper): Order, please. It is a related matter, and if the deputant chooses to respond, she may.

Mr Callahan: I saw a smile, so that was enough response for me. I think she knows what I'm talking about.

In any event, I heard arguments of constitutionality from the group that came before us before. The same thing's going to happen with Bill 120. It's unconstitutional. I haven't heard any arguments here about the unconstitutionality of it, nor have I heard how foolish we are as legislators to try to solve a problem.

I don't agree that anybody who is not guilty of the act should be punished. I'm much in favour that it should be the person who does the act, that they should be removed from the scene, not just for the family but removed because of the neighbours. We're burying our heads in the sand if we don't believe there are a lot of drug dealers out there in rented accommodations too. It's a lot easier to move very quickly. If you own the house, like a Pablo Escobar, they know where you are, they know where to serve you with whatever or arrest you, but if you live in rented accommodations you can move very quickly. I'd be willing to bet that if you checked the records in drug prosecutions, and I know of what I speak, in most cases they are rented accommodations.

What you're doing is that you're asking your neighbours, who have to rent—and I've heard things about this being the disadvantaged. There are a lot of young couples who rent too, who can't afford to buy a house in this economy. Why leave them at risk? What is so terrible about the felon being punished by not being able to go back to that house and cause problems with the family, with the kids, with the neighbours, to allow guns? Guns are directly involved with drugs. Anybody who says they're not has got his or her head in the sand. In my

own community, in the drug busts that take place, they find massive numbers of guns, enough to start a revolution. Is that safe? Am I, a person in rented accommodation, supposed to live next door to that person, with the potential of being shot as I come out my door in the morning? Do I have to wait till they find drug needles on the ground so they can come in and use the section under the Landlord and Tenant Act, or is it something that requires public policy to ensure that this person is adequately taken out of the scene and is not there to hurt the family he lives with or not there to hurt the neighbours?

Forget about 120. I'm not even expecting an answer to that question.

1640

Ms Wandal: I will leave Bill 120 out of it.

I think there are some slippery-slope arguments you've made there. We're painting things with a very broad brush, first of all. It's not altogether clear that every single person who traffics is necessarily putting fear and terror in the hearts of the people around them. In fact, it may be the case that other tenants are not even aware that this is going on. There are a number of cases in court where the court has found that the family itself was not aware that this is what an individual was doing. I don't think we can assume that every single trafficker is creating havoc. If they are creating havoc within a high-rise building, we agree it can be difficult for the people living there, no doubt about that.

What we think is more effective is if the tenants themselves decide they are going to ensure that they create a safe community for themselves. They do this through Vertical Watch; the police come in and assist them in trying to make their building safer, trying to be more alert and proactive. That to us is a more effective long-term solution than simply saying that the state will throw out whoever is convicted, even if other tenants are not disturbed, even if their family needs them, and even though—and this is to me quite an interesting question. Supposedly, once you have served your time and paid your debt to society, you are entitled to re-enter society. Now, either we're going to be incredibly cynical about the effectiveness of putting anyone in jail to begin with, or we have to say that once they are released from jail they have a right to be a member of society again. They should not be ostracized and told, "You no longer have a right to have a place to live."

Mr Jackson: I'm interested in this whole notion on your final page, around disruption of other tenants and compliance by the landlord and talking about empowerment for tenants themselves to create an environment. Knowing the work the Federation of Metro Tenants' Associations does, what do you do with a tenant who comes forward to you in your legal aspect and says: "Help me. How do I get the Landlord and Tenant Act to protect me? How do I as a tenant get some rights here?" When I asked one of the organizations earlier, they said, "We've never had the request."

Ms Wandal: We have.

Mr Jackson: I assume you have. You represent a

more inner-city group than the group that was before us, in fairness to them. Can you speak to us about how you handle a request like that, without getting into all the issues of home owner and non-home owner and all that? We can maybe debate that, but I'm interested in understanding how we help a tenant, because I'm told that the current Landlord and Tenant Act isn't working.

You've suggested as your final point the "reasonable enjoyment" matters. Are landlords not calling in the police and pressing to evict tenants? I know you're not fond of evictions, period, but what rights do tenants have to reasonable enjoyment if they're watching guns being brought in, illegal activities? They are victims. They deserve to have victims' rights when they go to court, to tell the judge, "Your Honour, I don't want to live next door to that person." Therefore they end up moving and we have reverse discrimination of eviction occurring. Can you help us understand how we can get at this? We're told the current system isn't working.

Ms Wandal: You also asked what we do now as far as tenants' complaints go. There are some measures that tenants can take under the act, because they can take the landlord to court for reductions in rent because of loss of enjoyment. The corollary is that the landlord has—

Mr Jackson: For economic reasons.

Ms Wandal: —incentive to actually do something about the problem.

It's one of the interesting things we see. I would say there are two quite separate situations that arise. There is often a situation where tenants have a problem with another tenant not because of drugs but simply because of noise and parties late-night, that kind of thing.

Mr Jackson: I'm familiar with that part of the act.

Ms Wandal: That's kind of an interesting situation. What we often see is that it's a very good thing that the Landlord and Tenant Act requires that the standard that be used is that of a reasonable person, because you may have people whose expectations of what life can be like or what life should be like in a high-rise are just unreasonable.

Mr Jackson: I'm sorry, Deborah. You're telling me about the act, which I'm familiar with. I'm asking what advice you give. There's limited time, and my colleague does want to respond.

Ms Wandal: If there are drug problems, we go out and talk to tenants about creating a secure building. We have suggested that tenants work with the police. There are measures now that different legal clinics are taking to work with the police in different municipalities, to make them more familiar with tenant rights, to make them more sympathetic to tenants. I think it's a long-term process.

Mr Runciman: It would be interesting to poll the tenants who fall under this association to see how they feel about what this bill is attempting to accomplish. There seems to be a great deal of sympathy or concern, using terms like "cruel and unusual punishment" in terms of dealing with drug dealers, Mr Winninger saying they should have the right to ply their trade, those kinds of comments we're hearing this afternoon.

Mr Winninger: A point of order, Mr Chair: I never

said they should have the right to ply their trade.

Mr Runciman: We'll have to check Hansard.

Mr Winner: I used a term from the act itself, which refers to "trade." Perhaps Mr Runciman could correct the record.

Mr Runciman: If I'm wrong, I apologize.

Mr Winner: I think you were.

Mr Runciman: We'll check it out, and if that's the case I certainly will apologize.

I don't think this diminishes the concern of so many people about the spread of AIDS. We've heard talk about dirty needles in hallways, all sorts of crime that finds its origins in the drug trade. We had a previous witness say, "We have a process where neighbours can lodge a complaint," but we've also had testimony, and certainly we'll hear more of it, that neighbours don't want to do that. There are no guarantees in that game for them. They go and complain against a neighbour and the next night they have a .38 stuck in their mouth.

Maybe they have legitimate and genuine concerns about the legislation, but at the same time there's a very serious problem out there, and one that has to be addressed.

The Acting Chair: Ms Wandal, thank you for taking the time to give us your presentation today.

1650

EAST YORK TENANTS' ASSOCIATION

Ms Mary Jo Donovan: My name is Mary Jo Donovan. I am the president of East York Tenants' Association, a tenant advocacy group for the borough of East York. I'd like to thank the committee for this opportunity to address the issues to which Bill 20 gives rise.

We cannot support the bill. We consider it both unnecessary and excessive. It augments a section of the act that should itself be deleted. We are referring to clause 107(1)(b). It is our contention that clause (b) is redundant and biased and should never have been included in the first place. We would be remiss if we failed to point this out.

You will have heard a number of scholarly and reasoned presentations by now which I am sure dealt with this point in some detail, along with comment on the international covenants which condemn the use of eviction as a punishment and on the fact that this legislation may well be beyond the scope of provincial jurisdiction.

Although I did not hear them myself, I am reasonably certain that EYTA would have no—

Mr Callahan: Sorry, I didn't mean to interrupt you. I got you a hand-held mike, but I can't find a place to plug it.

The Vice-Chair: Thank you, Mr Callahan. Please go ahead, Ms Donovan.

Ms Donovan: We're reasonably certain that EYTA would have no problem supporting the positions taken by the tenant advocates who preceded us and will try therefore to avoid being repetitious.

However much we may prefer to deal with what we consider to be more important changes to the Landlord and Tenant Act, the committee has met to discuss Bill 20 and it is incumbent upon us to do so. You have heard the reasoned arguments, so instead we will pose some questions which we hope may provoke some thought long after Bill 20 is gone and forgotten.

On the face of it, the intentions of the bill may seem laudable, but viewed in the context of other realities, they are seriously flawed. The bill is preoccupied with the welfare of those who live in apartment buildings, but while indulging in this inordinate concern for the citizens of the vertical village, there is no similar concern for those who live in the horizontal village. Are we dealing here with two classes of citizens? If it is bad for a citizen in the vertical village to live next door to a convicted narcotics offender, then it is equally bad for a citizen of the horizontal village to live next door to one. This concern for vertical villagers is gratifying, but those who live elsewhere must not be deprived of the same degree of concern.

Nor is there an equal concern about those convicted of other crimes such as murder and theft as there is about those convicted of drug offences. Are we to conclude that it is safer to live next door to those convicted of other offences than it is to live next door to a convicted drug offender?

Further, must we concede at last that the penal system offers no hope for rehabilitation, that all narcotics offenders, having served their time and paid their debt to society, will return to the community, assuming they still have a place to return to, and simply take up where they left off? Would this be true also for thieves and murderers? This being the case, why not simply abandon these poor wretches to a lifetime behind prison walls, do away with the sentencing options and take the Alice in Wonderland approach of, "One false step, and it's off with your head"?

What about the narcotics offender who deals on the downtown streets in doorways and cafés and then returns to his comfortable home in Don Mills? Shall we confiscate his house, which was paid for with illegal drug money? And what about his wife and children? Will they also be put out in the street? When he comes out of prison, will he be permitted to buy another house? If not, would he be able to rent an apartment, or would he be on a blacklist because he had been convicted of a narcotics offence?

Similarly in the vertical village, even though the dirty deed is done elsewhere, it is no less criminal. None the less, the hapless bungler who lacked the wit to move his transactions to the nearest street corner instead of using the parking lot will feel the full weight of this unforgiving law, while the dealer who plies his trade elsewhere escapes the harsh punishment of this other one.

Will we rid the vertical village of what may be a relatively harmless one-time offender and leave a real criminal in place? What about the wives and children of these convicted offenders? Are they to be dealt a double penalty, both the loss of a husband and father and the loss of a home? Even if they are permitted to stay, will

they then have to make a choice, when he is released, between having him back or keeping a roof over their heads?

What if he is convicted but given a suspended sentence? Should the sentence handed down by the landlord be harsher than the one handed down by the court? What if the suspended sentence is contingent on having a place to live? What if etc etc.

Before we leave the comparison of the vertical village to its horizontal neighbours, why should the vertical village not have the same police protection as others? Where are the community foot patrols, and why are these vertical villages totally neglected in this regard? Let's have legislative action to support some preventive care, for a change.

It is readily apparent that this bill gives rise to more questions than answers and more problems than solutions. We are sure this was not the intention of the framers and that perhaps a genuine concern over the problems of drug dealers at certain locations prompted a hasty and ill-advised response, the deficiencies of which become obvious with more careful scrutiny.

We are all in favour of ridding our society of narcotics abuse. The solution that springs to mind most readily is to get rid of the dealers, but if you banish them from one village, be it vertical or horizontal, they will relocate elsewhere. Should we rid ourselves of a problem by dumping it on our neighbour's doorstep? There has to be a more acceptable solution. Drug dealers will be with us as long as there is a demand for the product. Steps must be taken to eliminate the demand.

The real problem is at the heart of this society that has failed utterly to instil in its citizens the values and attitudes that are necessary to prevent the growing trend to self-destructive behaviour, drug abuse being one of the more visible examples. Those of us who find ourselves in positions of power and influence must accept our responsibility to inspire good behaviour in others by setting a good example.

The leadership of a society sets the moral tone of that society. Too many politicians have failed in their obligations in this regard. Too many have used their position of trust as an opportunity to promote their own self-interest. Is it any wonder that the populace has become disillusioned and cynical when it is faced daily with revelations of activities which range from questionable to sinful to criminal?

Nature abhors a vacuum. The space that is not filled with good will surely be filled with its opposite. Where there's a failure of virtue, there is a corresponding growth of sin. Consider the prevailing attitude in North America and elsewhere of the casual disregard for the sanctity of human life. Is it any wonder that the killing of a body with drugs, one cell at a time, does not provoke a more urgent response when the murder of thousands of babies is sanctioned by governments in Canada and North America and around the world?

Is it any wonder that drug dealers find a ready market for their wares when those who have the most opportunity to exert influence for good in this society are more

preoccupied with being politically correct than with being morally sound? Until this changes, we will continue to have problems of crime and corruption, including narcotics offenses.

We were given 10 commandments to live by. Since then, man has written 10 million laws in an effort to enforce them. We were told to love God and love one another, but our love for one another leaves a lot to be desired, and we're not even supposed to mention God, let alone pay him homage. Too many of us have opted in favour of being politically correct.

Where are the members of the House when the opening prayer is said? Most of them are absent. What message is sent to the young pages and those watching from the gallery or at home on the TV as they witness the behaviour of the members, the verbal assaults full of acrimony, scorn, derision and vituperation, the angry outbursts, the petulant accusations, the nasty innuendo, the endless stream of recriminations from all sides, reproving one another not in the spirit of paternal correction with respect and forbearance, but rather with a triumphant sneer of smug satisfaction and an outward show of righteous indignation and moral superiority, usually unjustified?

What has happened to the art of gentle persuasion and effective political debate? Until there is a genuine willingness and effort to treat one another with respect and dignity, and unless there is a show of real moral and ethical leadership, you can write all the laws you like and they will have little or no effect. You must stop using the Legislature as a venue for venom. Stop wasting our time and money in pursuit of political opportunities with all these fruitless endeavours.

Last month we had Bill 95 and this month we have Bill 20, both of them useless for different reasons. If you really want to get rid of the drug problem, you would be better advised to provide a moral climate where it cannot flourish than to write a biased and inappropriate law.

Some of our remarks may seem politically naïve, as though we don't know the game or the rules, but we insist that all the rules should be predicated on the golden rule, and the ones that are not should be changed. The youth of today have seen those who preceded them grow rich on the backs of the poor. They have seen liars and thieves given honour and respect simply because they were wealthy and powerful. They've seen overindulgence and dissipation and casual disregard for logical consequences. How can you expect them to have regard for their own physical wellbeing or for the laws of this society when the message coming at them loud and clear is that the only crime is getting caught?

1700

There was a time when we observed a number of unwritten laws, when it was understood that there were certain things that were simply not done. That was before pornography and violence and licentious behaviour were dished up as entertainment. That was before TV and computers and the information highway, which allow secret sins to become public knowledge around the world in a matter of minutes.

Those in the public eye today are totally exposed. They must be on their guard at all times. They must be, as Caesar's wife, above reproach. They must not only be good, but they must be seen to be good. If politicians want to have good reputations, they must strive always to be what they appear to be; otherwise, truth will out and disenchantment will set in, especially for the young. Even lowly advocates of the residents of the vertical village have an obligation not to disappoint those who look to them for guidance and leadership. These concerns have been expressed in the hope that things can change.

We all know that Bill 20 is going nowhere. It only reached this stage because the government failed to have sufficient members in the House for the vote on second reading. But it will certainly be defeated on third reading, as well it should, because it is a bad bill.

However, the concerns that gave rise to it are serious and worthy of attention. We have used this opportunity to focus a little thought on some of the underlying problems as well as point out the flaws in the bill. I thank you for your patient listening. I'll do my best to answer your questions.

Mr Callahan: Let me say, first of all, bravo. With a name like Donovan, you've not let down the Irish, let me tell you. I was going to leave a little earlier because I had to go to something, but I'm glad I stayed around. It's nice to hear someone come here and tell us as it is. You're quite right in a lot of the things you say.

But going back to the issue at hand, we're going to have to struggle with whether we defeat this bill or whether we pass it with amendments and so on. A lot of aspersions have been cast on Mr Runciman for bringing the bill forward. I really think you've acknowledged the fact that there is a problem in terms of drug dealing.

The act is deficient. You may not have been here when we were discussing this, but I questioned the fact of a person's family being tossed out because one member of the family was selling drugs. On the other side of the coin, if that were remedied, do you think it's wise for a person who is before the courts on big drug dealing stuff to be sent back to the house where his family is, to be a model for the children or for his wife? Or do you think it's a good idea that he's out of the house, at least for the duration, so that this problem doesn't continue?

Ms Donovan: The fact that he's not in the house doesn't decrease his bad example on his family. They all know what he is already, so that is beside the point. The thing is that children love their fathers in spite of their bad example, most of the time. Fathers have a far more important role in the family than they've ever realized. Children will more often imitate their fathers than they will their mothers. If a father reads a lot, his children will read a lot. If the mother reads a lot, the children might, but it's the father sitting there reading good books that makes the children read good books.

Mr Callahan: Equally, if he deals in drugs, he's not a very good example for the children.

Ms Donovan: But putting him out of his house isn't going to change that. The children already know he deals in drugs. What he should do is have the support and

encouragement of his family to stop dealing in drugs, to be prevailed upon by the system and by whatever means society can provide to desist from this unwelcome behaviour. Punishment doesn't work. As I said in my brief, you have to provide a climate where people want to do the right thing. You have to provide a climate where children and young people don't see the drug dealers driving around in big cars while they're on unemployment insurance. You have to make things right and equitable and moral and decent in society, and then the people in that society will respond to that.

You can't expect people to see all this terrible stuff going on and say, "Oh, that's all right. I'm going to be good, even if they're not, but they're going to get rich and I'm going to be poor." This doesn't work. You can't have it both ways.

You have to face the fact that you've got to provide a good example or you won't have a good response. Parents have to do that also. You're talking about the children of the occasional drug dealer, but those children also have a mother to respond to and male teachers in school, and they'll have male politicians to look at and see that there are other ways to go. But if they look around and see the teachers maybe not doing what they're supposed to do, and if they see the politicians not being the kind of people they should be, they have nowhere to look, no good example to follow, and they figure, "Well, drug dealing might be okay."

Mr Runciman: I want to compliment the witness too; she's done a lot of work. I did agree with bits and pieces of your testimony as well. You made one reference to gentle persuasion and the decorum in the Legislature, and I certainly agree with that. It's regrettable that some of the previous witnesses weren't here for that contribution in terms of their own presentations.

There's been a consistent theme through all the presentations today of tenants' groups and people opposed to the legislation, that there's a distinction between tenants and home owners, that we're trying to penalize tenants while at the same time anyone involved in this business who is a home owner is going to go scot-free. I'm looking for clarification on this from our researcher tomorrow, Madam Chair, but I understood there was federal legislation that allowed the government, through the RCMP, to seize property and assets of anyone convicted of doing this sort of thing, which have been gained as a result of their illicit activities. I'll ask if the researcher can confirm that. I think it shoots a hole in that argument or theme that's been presented by most of the witnesses today.

Another theme, as I see it, is this concern for drug dealers and their families. I share part of that, in terms of the family, but I think the concern is somewhat misguided in the sense that I take the view that the family, the children especially, are victimized the moment the drugs come into the apartment. Simply to say that we can't deal with these drug dealers with the very few options that are available to us because we're going to do some sort of harm—if we can get that individual out of that place, it's in the best-interests of the family and the children and the neighbours and the other tenants. I'm not

saying penalize the family. I don't want to see that occur any more than you do. But we have to start taking steps.

You mentioned support for increased policing. I share that. You said that the act should perhaps be broadened. Maybe you didn't say it that way, but you talked about other serious convictions. Our first witness suggested as well that perhaps the act should be broadened.

Those are just a few things I wanted on the record. Thank you for being here today.

Mr Gary Malkowski (York East): Thank you, Mary Jo, for all your hard work and your research on the bill. Some of your comments on Bill 20 make perfect sense, but if you wanted to substitute something for Bill 20 or broaden the scope of Bill 20, how could that be done to try to provide a safe environment for people who live both in apartments and in houses?

Ms Donovan: I don't think the scope of this bill can be broadened. I think the bill is inappropriate. It's in the wrong forum. The Criminal Code already provides remedies for people who break the law, and that includes drug offenders and everyone else. This bill isn't necessary, and neither is the section in the act that requires eviction for illegal activities. You already have laws to deal with drug dealers and stuff. What difference does it make if they're in a house or in an apartment or standing on the street corner?

Mr Winninger: I'd also like to thank you for your presentation. Some people say government members all sing from the same hymn book. The day second reading took place in the House, we did in fact have enough members there to defeat the bill on second reading, but there were a few members who, perhaps in their honest desire to take a tough stand on drug dealers, decided to send this bill to committee, and that's where we are today.

To me, it appeared to be a political statement Mr Runciman was making. He never expected it to go to committee. And you may be right: The bill may be going nowhere fast, but we'll know over the course of the next couple of days.

You make a very legitimate point when you suggest that the laws are already in place to deal with drug dealers. The Criminal Code or the Landlord and Tenant Act both offer appropriate vehicles to deal with drug dealers.

Ms Donovan: Yes, and other criminals. This concentration on drug dealers—I mean, what about a rapist who's living in an apartment building? What about a petty thief? What about a B and E artist? I'd have far more concern about that, if I was going to be concerned at all, than I would be about drug dealers. Plus, there's the fact that a great many drug dealers associated with apartment buildings don't even live there; they hang around in the back of the apartment buildings. They certainly do it in East York. That's why you don't see police on the street, because they're in the laneways checking for drug dealers back there.

I have also been told, and I have no proof of this, that landlords are getting a cut from the drug money if they let people stay there; that they're renting apartments by the week for an exorbitant amount, and if something happens the guy just moves to one of the other buildings.

There's a whole range of things going on that this bill doesn't even come near discussing. All of these things the police are aware of, and I'm sure they're doing what they can. But drug dealers don't stay in one place. They move around. They hang out in the back. They go into apartment buildings that don't have proper locks on them, and they hang around in the stairwells and sell their drugs. They don't even live there, most of them.

Mr Winninger: Perhaps Mr Runciman should be going after the complicit landlords.

Ms Donovan: It's very difficult to prove, unfortunately. Cash transactions leave no trail. I can't prove it and I don't suppose anybody else can, but we know it's going on, just the same.

The Vice-Chair: Thank you very much. This committee will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1713.

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Callahan, Robert V. (Brampton South/-Sud L) for Mr Murphy
Cooper, Mike (Kitchener-Wilmot ND) for Ms Akande
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
O'Neill, Yvonne (Ottawa-Rideau L) for Mr Chiarelli
Perruzza, Anthony (Downsview ND) for Mr Mills
Runciman, Robert W. (Leeds-Grenville PC) for Mr Tilson

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Official Report of Debates (Hansard)

Tuesday 8 March 1994

Journal des débats (Hansard)

Mardi 8 mars 1994

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Tenants and Landlords
Protection Act, 1993**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Tuesday 8 March 1994

Mardi 8 mars 1994

The committee met at 1019 in the St Clair/Thames Rooms, Macdonald Block, Toronto.

TENANTS AND LANDLORDS PROTECTION ACT, 1993

LOI DE 1993 SUR LA PROTECTION
DES LOCATAIRES ET DES LOCATEURS

Bill 20, An Act to protect the Persons, Property and Rights of Tenants and Landlords / Projet de loi 20, Loi visant à protéger la personne, les biens et les droits des locataires et des locateurs.

FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

Mr Philip Dewan: Thanks for the opportunity to appear this morning. I'm representing the Fair Rental Policy Organization, the largest landlord association in the province. We represent some of the smallest and some of the biggest landlords in Ontario, primarily in dealing with provincial regulatory issues, rent control being first and foremost among them, but basically any area of legislation that affects landlords in the province.

Interjection.

Mr Dewan: No, we won't deal with rent control today. We'll stick to the issue at hand.

FRPO certainly supports the principle of the proposed legislation in that it's looking to provide a mechanism for the speedy eviction of tenants who have been convicted of narcotic offences. We would favour any provision that makes it easier to evict those tenants who intimidate and threaten the safety of other tenants as well as make rental buildings less desirable and obviously affect the ability of landlords to carry on their business.

There are provisions under the Landlord and Tenant Act today, which I think you've heard about previously, which do allow landlords to evict tenants who are conducting illegal acts, not just criminal acts under the narcotics act but any type of illegal activity.

One of the difficulties that landlords encounter is that they may be either unaware of or unwilling to employ those provisions under the Landlord and Tenant Act, and therefore the provisions of this legislation could provide a complement to the rights that are already available under the Landlord and Tenant Act.

There are something like 130,000, 140,000 individual small landlords in the province of Ontario. I shouldn't say they're all small, but obviously a great many of them are. A large majority of those people would own a single unit or duplex, maybe a fourplex. They're very small, part-time landlords, and often their knowledge of the Landlord and Tenant Act and the legal recourses available to them when there's criminal activity going on may be more limited than it should be. They also don't have

the legal resources or the financial resources to engage the type of help they'd necessarily need to get an eviction in some circumstances, and many of them are from immigrant backgrounds and they may be shy about going to authority with problems. They tend to take a different approach in some cases than others in that their background has not encouraged them to go to police authorities or legal authorities. In all these sorts of cases, having legislation of this type may be a useful complement to the provisions of the Landlord and Tenant Act.

However, when we first saw the legislation, I guess we did have a very significant concern that Bill 20 as it's drafted could inadvertently have the opposite effect of what I think was intended by in fact imposing or encouraging a higher standard than is available now. Obviously, to get an eviction under the Landlord and Tenant Act under section 107 at the moment, you do not have to await a criminal conviction, and we would be very much opposed to anything that would encourage, in the majority of circumstances, awaiting a criminal conviction before you could get an eviction. Right now, a landlord who is faced with a problem in his or her building can proceed and under several different provisions of the Landlord and Tenant Act seek an eviction on relatively short notice because of illegal activity going on in the building, or also because of the noise and disruption which in many cases affects other tenants when there is criminal activity going on in a particular unit. We certainly want to avoid any impairment of that ability to continue to seek eviction under those circumstances.

Because the Landlord and Tenant Act, being a civil act, requires only proof on the balance of probabilities, there is a lesser standard imposed as well than in the Criminal Code, where of course you have to prove beyond a reasonable doubt that there has been criminal activity taking place. For that reason as well, we want to make sure landlords continue to have that ability, because you do not want to have a tenant who is carrying on criminal activities in a unit continuing to disrupt the other tenants and damaging the unit and destroying the environment of the building for the months or years that it takes to get through the criminal justice system and get to the stage of conviction and sentencing.

I won't cite the specific provisions, but there are precedents available in law to show you can get tenants out of a unit where there are reasonable grounds to suspect there's criminal activity, long before there's actually been a conviction. So that is our major concern about the legislation.

I saw last night—late, late last night—the amendments

that have been tabled by Mr Runciman to try and address some of the concerns various groups have raised about the bill, and I think they are a good indication that there's been a willingness to try and meet some of these concerns and address them. I think the lawyers and the agents for landlords we've dealt with would still be most comfortable to have language that is a little more explicit than what I saw in the amendments in terms of stating directly that there's nothing in this act that would deprive a landlord of the right to seek an eviction under section 107 of the Landlord and Tenant Act. Other lawyers may argue that's unnecessary, but given the way some judges have interpreted legislation in the past, we want to be absolutely clear that this is a complement to and not a provision that overrides the Landlord and Tenant Act.

There are a number of other specific concerns about the bill that are raised in our brief, which I'll touch on quickly, relating to the time delays that are incurred. There can be, as I understand it from talking to lawyers and crown attorneys, a significant delay in some cases between conviction and sentencing, if the judge has asked for preparation of a pre-sentencing report, for instance, which can take many weeks to complete. We would prefer in these cases that there be the ability to ask for an immediate eviction on conviction rather than have the individual in the unit for the six weeks or whatever time it takes while awaiting the judge's decision on sentencing. Also, the notice period that's provided, 30 days, is significantly longer than what is in the Landlord and Tenant Act. We think those should be meshed, to be in agreement, and also that there should be an ability to appeal the eviction only if there's an appeal of the conviction itself, that those should be linked together.

Finally, there's an issue that is very important to landlords. It's not addressed in this bill, but since it's referring to the whole environment that's created by drug offenders in buildings, we think it should be raised, and that is the issue of restitution. There can be an enormous amount of damage caused by illegal activity from drug-related offences in apartments. Units get virtually trashed in many cases. I mean, they're uninhabitable without major restoration, and the costs of this are enormous.

It's one thing for a major landlord owning many thousands of units to have to absorb this cost on a number of units in his complexes and it's quite another thing for the individual small landlord who owns one unit or a duplex to be essentially facing those kinds of restoration costs plus the loss of many months' rent while the work is going on. It may mean, and in some cases has meant, that the individual can't carry the mortgage on the building. This is something we think should be looked at. Obviously, there are overlaps here between provincial and federal jurisdictions as well, when you get into issues of criminal compensation and restitution, but there are some overlaps in the legislation anyway, and since we've raised the issue, I think it's something that should be examined much more carefully.

I guess I'd just conclude by saying that for landlords across the province drug-related activity is an increasing problem. It is something you hear about very regularly. As I say, there are provisions now where knowledgeable

and aggressive landlords can get these people out, but for cases of lack of resources, lack of knowledge or simple intimidation where individual small landlords are afraid to act against criminal elements in their buildings, this proposed legislation would provide an additional route by which society could try and help address the problem. We would support that intent. I think that's all I have to say. I'll try to answer any questions that the committee members might have.

Mr Robert V. Callahan (Brampton South): There are a number of concerns. The first one was that the eviction, unless this act is amended, would result in perhaps the innocent people, the family, being evicted as well. There were some suggestions as to how that could be deterred by the writ of possession being engineered to be just directed towards the person who is involved. My major concern, and I expressed it yesterday, was about the fact that this has to go to the General Division court. Certainly 70% of the cases of trafficking and importing may wind up being dealt with in the provincial court, which gives no remedy whatsoever.

I had suggested that maybe the approach to deal with the purpose of this bill would be to have the feds provide legislation, an enlargement of that section that allows an injured party to seek compensation on a sentencing hearing from the person in question. I don't know whether you'd get into a constitutional issue there as to whether or not, this being property and civil rights, they can do it, but it seemed to me that this should allow them to deal with that issue at the provincial court level as well, because they're already making compensation orders at the provincial court level. That would allow the judgement to be filed as a civil judgement with the courts, thereby saving an awful lot of duplication of court time, because I'm sure you and others are aware of just how backlogged the courts are.

The General Division court probably wouldn't hear any of these because of the reason that most of these cases are heard down in the lower court. I'm looking at the time frame. To try to get into the Ontario Court (General Division) in my jurisdiction is probably a year, maybe more, 18 months. In Toronto it could be two years. As I understand it, under the Landlord and Tenant Act provisions it's a summary application, so you can get it on in motions court very quickly.

1030

So having said all those things, and you seem to be nodding your head in agreement, it seems to me that—and we've had a lot of arguments from people here about the constitutionality of this section and whether it infringes subsection 15(1) of the charter and there are very compelling arguments it probably does, or you'd have a tough time fitting it into the race, religion, sex and so on, but they try to create by analogy that these people might fit in the Anderson case in terms of being infringed against.

I don't know, I hear what you're saying and I hear what the landlords are saying, and I certainly think that, not just from the landlord's standpoint but if I was a tenant in an apartment building where there was active drug trafficking going on with the complementary fact

that the drugs usually mean guns as well, I'd like to find a way to get them out fast too. But I'm not sure that we're creating that.

There's one other concern I have as well, which you might want to address if you have time. The question is, if this bill were to pass—and because it becomes part of the penal process you may very well be met with the argument in the civil court, if you tried to use that remedy, that it had to be stayed pending the outcome of the criminal process on the basis that cross-examinations on affidavits, if that was required, would prejudice the trial of the accused and the potentiality of sentencing provisions there; a lot of things.

I understand what Mr Runciman's trying to do and certainly in principle I think that any logical-minded person would support that type of principle or accomplishing that principle, but the more I hear, the more I read, the more concerned I get that the bill is going to do nothing more than develop another layer of applications to courts which is going to slow down the prosecution of those guys, and ladies perhaps, who we should be giving permanent housing to in our reformatories or our pens if in fact they're guilty of that type of an offence.

Mr Dewan: Certainly there are some real problems here with overlapping jurisdictions. Unlike you, I'm not a lawyer, so I'm not going to try to sort through all of it, but I think that our biggest concern coming in here was just to make sure that in supporting the principle of this legislation and seeing it move along—we'd very much like to do anything to help address these problems, but we absolutely cannot risk compromising the ability of landlords to get evictions at an earlier stage under the Landlord and Tenant Act. That has to be made predominant because, as you say, applications in the criminal courts in these cases may well take a year or more or two years to get to the stage of being heard and then the delays with sentencing and so on.

Mr Callahan: Any time you move in next to a person who's charged with a drug offence and been committed for trial—even though they're not guilty at that point, there's certainly enough evidence for a jury to be instructed about the charge—I think it would be more dangerous at that point to continue living next to somebody if you know they've got drugs and guns in there.

Mr Dewan: And I think a landlord in many cases would be negligent if he did not take action to try and get an eviction at an earlier stage. Landlords are required to protect the environment in the building as well. In most cases there are other routes that are available. I can see how this type of action would be a complement for those instances where the landlord, through his own lack of initiative or for financial or legal or whatever reasons, was not taking action; this could be useful. But, as I say, we certainly cannot afford to compromise the ability to get evictions under 107 of the Landlord and Tenant Act.

Mr Robert W. Runciman (Leeds-Grenville): I appreciate the witness's appearance here today and the work he's done. In introducing the legislation, I didn't want to compromise the ability of landlords to achieve speedy evictions either, as I'm sure you appreciate. We'll try to address that tomorrow when we're dealing with

clause-by-clause. One of the things you said at the outset, which I think was somewhat contradicted by what you said just a minute or two ago, is sort of a general degree of satisfaction with the eviction process through the Landlord and Tenant Act. Early in my adult life, my wife and I owned an eight-unit apartment building. I tell you, it's one of the worst experiences I have ever had.

Mr Dewan: I wouldn't want to imply that landlords are satisfied. We just don't want to make it worse.

Mr Runciman: I agree. I don't think it could be much worse. I'm telling you, my wife almost had a breakdown over the process dealing with the sheriff's office and trying to get this thing going with people who hadn't paid rent for months. When they did leave the apartment, they left excrement all over the walls; they did all the sorts of things you were talking about.

Yesterday we heard sort of a blanket condemnation of landlords; talk about the worst people in the world, if you believe many of the witnesses here yesterday. Most of them are honest, hardworking people, but they were certainly dragged through the coals yesterday without an opportunity to respond.

But we did hear from these same people who purported to represent tenants that this legislation was cruel and unusual punishment for drug dealers, a violation of drug dealers' human rights, those kinds of concerns were expressed here yesterday. The representative of the Bathurst Quay Residents Concerned mentioned that as far as she knew, drug dealing wasn't a real problem. She'd only seen one when she was out walking her dog. A more serious problem, whether she'd seen this in person or not, but she certainly had no reservations about what she considered racism on the part of police in her district.

Mr Anthony Perruzza (Downsview): On a point of order, Mr Chairman: With all due respect, I was here yesterday and I heard the witnesses and quite frankly, that's not what the witness said. The member was corrected in that yesterday and the person's not here today to challenge him. So to make those kinds of blanket accusations in someone's absence or to distort the serious presentations that were made before this committee carte blanche is really inappropriate. I would ask the member to sort of keep his comments in check.

Mr David Winninger (London South): He was right, though, when he said she had a dog.

The Chair (Mr Rosario Marchese): I understand your point. The record is there in terms of what the deputants said so that people can verify that if they want.

Mr Runciman: That's right. She said something to the effect that the police were shooting an awful lot of blacks in her area. So I'm not withdrawing it. I think the implication was pretty clear in what she said.

Mr Cameron Jackson (Burlington South): Mr Perruzza was not present.

The Chair: Mr Perruzza, it's not a point of order.

Mr Perruzza: It is a point of order, Mr Chairman.

The Chair: It isn't.

Mr Runciman: He's taking up my time. This is deducted from their time, I hope, Mr Chairman.

Mr Perruzza: The member is using someone's comments to distort the facts and to present a different kind of picture. He misleads both the members sitting on this committee today who were not here yesterday and the public who are here today party to the proceedings.

The Chair: I appreciate your comments. All I can say is that the remarks of the deputant are on the record and so for anyone wishing to verify that, that can be verified through that process.

Mr Runciman: Absolutely.

The Chair: But your comment has been noted.

Mr Jackson: Point of order, Mr Chairman: My understanding is that when a point of order is called for, your immediate responsibility for the sake of this committee and for the record is to rule if the comments are out of order. You thanked him for his comments and I would ask you to rule he does not have a point of order.

The Chair: In the same way that I'm allowing you to make your comments, which are out of order, his comments were out of order; they were noted. I am noting your comments. We are trying to move through this as smoothly as we can and all I can say is, Mr Runciman is ready to continue with his questions.

Interjection: Rule.

The Chair: You're both out of order. They're not points of order. Mr Runciman, please go ahead.

Mr Runciman: Thank you, Mr Chairman. I would like to ask the witness if he can give us any indication of experiences that his firm has had with respect to this problem. I know we've heard the concern of other tenants who've come forward, whether they're immigrants or others, who are concerned about the real dangers that may pose for them in terms of complaining about a neighbour and the illegal activities that are occurring next door or the dirty needles that are lying in the hallway and these kinds of concerns that people have in terms of the intimidation factor and their own personal safety and the safety of their families. I'm just wondering if you could relate any experiences your firm has had in this regard and how serious the problem is.

1040

Mr Dewan: I think it is a serious problem. We do not deal with landlord and tenant issues specifically. As I say, our main mandate is on rent control and provincial regulatory issues, so what I hear about this is largely anecdotal, primarily in talking to the various regional landlord groups around the province in different cities.

It's a very frequent refrain from the smaller landlords as we visit these centres that they are enormously frustrated with many aspects of the Landlord and Tenant Act, and certainly securing an eviction on any grounds, as you were commenting, even for non-payment of rent.

In the area of illegal activity, which is mainly drug-related—some prostitution-related and others, but primarily drug-related—there is a real intimidation factor for many of the small landlords that cannot be ignored. If you're the proverbial widow who owns a duplex, and there are lots of those small landlords around who own a single unit or duplex, dealing with a very scary drug operation going on in one of your units is quite a threat-

ening situation. I think anything that can try to help those people out would certainly be desirable.

Mr Jackson: It's true then in the scenario you've suggested that where an apartment unit has sustained inordinate amounts of damage and where a landlord acquires larger legal costs associated with evictions, under certain circumstances both are pass-throughs for the calculation of the rents, not complete pass-throughs, but they are a part of the cost of doing business which is included in a form of rent. Therefore, any process which helps to marginally minimize those costs, because the eviction would occur through a criminal court under this recommendation and therefore it's just an application to the judge and the judge rules, there's less money being spent, that has a more positive effect on the bottom line which is the costs incurred by tenants in the form of their rent. Ultimately, there's a link here.

Mr Dewan: Under the current Rent Control Act, I'm not sure you could make that argument, because the limitations are so specific as to what can be passed through. In fact, if you incur huge legal costs because of a situation of this sort, there is no provision to go for an above-guideline increase in that case. Or the capital cost to repair the building, unless it was in excess of the 2% that is claimed to be built into the act, you wouldn't recover the cost either. But in theory, you're right, if it got to be significant enough. Either way, it's being passed through. Either it's an additional huge burden to the landlord or it's going to be passed through to the other tenants who are paying the costs of the illegal activities.

Mr Winner: Thank you, Mr Dewan, for coming again today. It's always a pleasure.

Mr Runciman was right when he said yesterday that someone got hammered. The person who got hammered was not so much the landlords as Mr Runciman for bringing the bill forward. Even though the majority of the presenters opposed Mr Runciman's bill, there was one person, Mr Harry Verschuren, manager of legal services, Greenwin Property Management—do you know him?

Mr Dewan: I know him, yes.

Mr Winner: He had several criticisms of the bill similar to yours, but he actually did Mr Runciman a favour and rewrote it for him and appended it at the back. One of the arguments that Mr Verschuren made was that you shouldn't just stop at drug trafficking; you should include drug possession and other illegal acts. In fact, in your paper you've given us some examples of illegal acts which led to the eviction of tenants, such as assault, weapons and other charges.

We had tenant advocates here yesterday who suggested that one should only be evicted if the illegal act affects the quiet enjoyment of other tenants. If it doesn't put other tenants at risk, why would you want to have that separate section? I put it to you, and I know you're not too sensitive on this subject, because I raised it the last time, one of the people I used to tangle a lot with on landlord and tenant matters when I was still in practice was Julius Melnitzer, the former president of your association until he went to jail for nine years for the biggest fraud in Canadian history. If someone like Mr Melnitzer was living in residential rented premises and

perpetrating his frauds, would that be a reason to evict him?

Mr Dewan: That would be grounds for eviction now under the Landlord and Tenant Act: any illegal activity. It doesn't even have to be criminal activity. You can evict for a violation of a bylaw if you can get the judge to agree. In fact, there was a case quite recently where a landlord in Ottawa, after a long legal process, was finally able to evict a tenant, and the co-tenant who actually rented the apartment, for keeping about 17 large tropical reptiles in the apartment. It wasn't a criminal matter, but it was something where the kids in the play area next door were rather intimidated by seeing these pythons crawling around the windows and so on, and there was an eviction allowed on those grounds. It can be any type of illegal activity, according to the Landlord and Tenant Act.

I just picked up some of the submissions at the back from the previous deputants. Looking at what CERA was saying, for instance, yesterday, the Centre for Equality Rights in Accommodation, they appeared to be making the argument that it is unconstitutional or contrary to Canada's international human rights obligations to evict for any criminal activity, which would be the opposite extreme, which would in fact be an argument that the current Landlord and Tenant Act is also unconstitutional. I think that's rather excessive.

I think you're going to find the judges who hear these applications using their judgement in terms of when and when not to make an eviction, and not all these applications obviously were successful in the past.

Mr Winninger: I guess I would have to ask you then as a follow-up question, if the Landlord and Tenant Act is so flexible that it can include snakes or reptiles and if, as we hear, even in Toronto, which is one of the busiest jurisdictions, it takes 2½ to 3 months to get the tenant out, to actually get the writ of possession from the time the tenant is served—and a lot less in jurisdictions that I come from, like London—if it's so summary, if you can proceed before you even have a conviction, if it captures offences such as drug trafficking, and if it can be done in such a speedy and expeditious manner, why would we even need a bill like Bill 20?

Mr Dewan: As I say, this is something we would see as a complement. You certainly don't want to eliminate the existing provisions, but there may be cases where a judge is reluctant to find that there are probable grounds. Obviously if there is a stream of shootings outside the unit because of drug activity, that's a pretty clear case. If you're having a shooting den in a building where people are coming in the back door, sneaking in at night and shooting up in the building, the landlord may well not have any grounds to try to demonstrate even probable, reasonable grounds that there is illegal activity.

Mr Runciman: The landlord may not want them out.

Mr Dewan: There's that. There are criminals who buy buildings to be able to rent them out. There are a number of circumstances that can arise. I guess this would help cover off a few of the ones that fall between the cracks now.

Mr Winninger: But you are aware that criminal

judges, as part of their dispositions on sentencing, can issue orders restraining defendants from associating with or being anywhere near certain premises.

Mr Dewan: They can.

Mr Winninger: They can order them to remain a mile away, if they want to.

Mr Jackson: If the victim is a party to the process.

Mr Winninger: They can issue orders of non-association with anyone they please.

Mr Jackson: If there's a victim impact.

Mr Winninger: No, with or without a victim impact.

The Chair: He's not asking you, Mr Jackson.

Mr Dewan: You have to remember, this covers everything from a high-rise apartment to a single-family dwelling that's being rented out as well. You don't always necessarily have other complaining tenants or people in the area. If it's an owner who doesn't live in the facility, who rents a single unit or single house or duplex, trying to provide evidence that there is even probable grounds for believing there is illegal activity going on may be quite difficult short of setting up a video camera for a week outside the facility. Having to rely on police sources, which are obviously quite different than what's available to the tenant in terms of their inside information, may well be the next fallback, and so for those situations I could see this bill being an important adjunct to what's illegal under the code.

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The Chair: We've run out of time. We thank you for taking the time to come today.

METRO DRUG ACTION COMMITTEE

The Chair: Metro Drug Action Committee, Mr Ian Hood. Welcome.

Mr Ian Hood: Thank you. First of all, I would like to thank the committee for allowing me to come here and make a presentation. I'd also like to thank Bob Runciman for giving us the opportunity and creating the catalyst to discuss these issues in regard to his bill. I had a very large presentation I wanted to come up with in regard to all the things you've heard. No doubt you don't want to hear them again, so I'm going to get into another area of consideration here.

I'm going to come straight to the point. The people who traffic in narcotics, in my opinion, are people who are the scum of the earth. I'm going to use the strongest terms possible here today. They're the merchants of death. They spread disease and misery throughout our community. The welfare rolls are full of the victims and it goes on and on and on. Anyone who comes down here and supports drug traffickers in any way, shape or form has lost their mind. They're not serving any purpose. I can assure you of that.

The greatest single problem that comes under these dope dens and shooting galleries is AIDS. It's a breeding ground. It's a serious, serious problem and we'd better start looking at it and addressing it. It's one of the most serious problems we face.

There are some people here who are opposition critics for Correctional Services. Let me tell you something:

20.1% of all women going into correctional facilities today are involved in intravenous drug use; 12.5% of males are involved. Those are staggering figures when you think about the amount of money it's costing this province to keep them there.

When people get involved in addiction, they become instant criminals. It isn't something they develop over a period of years in regard to patterns; it's just something that happens instantaneously. Why it's so important that you look at this bill and deal with it is because it's going to send a clear message to the international community that traffics in narcotics and the cartels that are here.

They're extremely well organized. They've got accountants, lawyers; they've got real estate agents. I can go on and on and on. This is a billion-dollar industry that's sucking the lifeblood out of this province. If you want to look at the budget, take a look at the serious circumstances that these people represent in the health care—and I can go on and on—policing, fire. Some 85% of all crime today that goes before the courts is directly or indirectly related to these kinds of circumstances.

You want to talk about their *modus operandi*? Without rental accommodation, their distribution network is in serious trouble. I can tell you, in the winter months they're not out there walking the streets. It's too cold; they have to go inside. That's one of the benefits we have in this province: They can't operate in the wintertime. They've got to go inside. The shooting galleries are nothing more than sickness. They're selling sickness, they're selling AIDS, they're selling disease. That's the bottom line, gentlemen.

The thing that concerns me is under the Health Protection and Promotion Act. Under section 13, the chief medical officer of health can walk into these places and close them down. For some reason, this government hasn't got the will to exercise it. They can order immediate evictions and they should, and no one's doing anything about it.

Your government some time ago had an opportunity to change the Health Protection and Promotion Act from 22 to 35, which would make this a virulent disease, which would clamp down on the wilful spread of the AIDS virus. That's what these dope dens represent. I can assure you, anyone who comes down here and supports drug traffickers is not doing anyone any service.

I'd like to thank Mr Runciman here, a man of vision and understanding, a man who is trying to do something here. I tell you this: It's not a matter of rights; it's a matter of controlling one of the most serious problems we face in society today.

The Addiction Research Foundation has made it very clear it's costing this province, indirectly or directly, \$9 billion a year. That's Bob Rae's budget deficit almost. Think about it. Welfare? When you're on drugs, sir, you can't work; you're on welfare.

I could tell you something else: Public housing is under attack. There are serious problems affecting the poor and the disadvantaged within this society, because this is where they get their human resources. Independent landlords, small landlords are being victimized. You've

got 140,000 of them out there who don't have the money to get rid of these people. The problems that they represent from the perspective of trying to deal with it are staggering.

So I say to you, whatever mechanisms are available, deal with this. Send a clear message to these people. The bipartisan politics down here have got to be put aside. This issue is too great to argue on the principle that Mr Runciman being a Conservative and the NDP being another persuasion is part of the body politic of this province. It's got nothing to do with this.

This is a serious issue and you've got to address it, because the consequences are simply this: With the AIDS virus, as you well know, the people do not die of AIDS. In many cases, they die of what we call class 4 diseases, which are airborne. We've got thousands of people coming on stream today, and I can say this most sincerely to you, who are developing full-blown AIDS. Their T count is below 200. They were infected two years ago or three years ago, and this problem is absolutely immense. Let me tell you something: You breathe the same air as they do. Meningitis, hepatitis, tuberculosis, all of these diseases that we've known for years that have been arrested in this province because of the diligence of the health department and many other people who have worked very hard, are now surfacing again.

You've got thousands of people walking around with immune disorders who have absolutely no protection. Get back to the reality of how this is happening. I can tell you right now, it's happening with us looking on and not taking the action we should be taking. I'm not talking of violence and all the other considerations; we're talking the health and wellbeing of the state here.

There are two main transmission points today in this province: One is correctional services and two is these places. Understand that. That's a reality.

I can assure you that this is not something to be trifled with. It's something that we all need the cooperation of everybody around this table to deal with. It's very important, and I hope that politics don't transcend here, but that the community is the most important thing.

I was going to get into a much more comprehensive assessment of this problem based upon all the legalities of this bill, but psychologically this sends a damned clear message to these merchants of death: The bullshit's coming to an end. We are going to deal with it.

I'd like to thank Mr Runciman for doing what he has done here to give us the catalyst and the attempt here to discuss this.

Mr Runciman: I appreciate the witness's appearance and his comments as well, obviously.

I want to ask you about the public housing question that you raised. I mentioned this briefly in my initial comments yesterday about public housing, and certainly the feedback that we've been receiving is that it is indeed, especially in the Metro area, a very serious problem in public housing areas.

1100

I know that Mr Mammoliti, who is a government member and supported this legislation on second reading,

has a great deal of public housing in his riding. He indicated to me that in his riding it indeed was a very serious problem. I understand he was going to be here today but perhaps he has difficulty if the government members have taken a position they're already going to oppose this legislation. I'm not sure.

Mr Winninger: He's on a committee down the hall.

Mr Runciman: Indeed, he has indicated to me his strong support for the legislation and for the intent of the legislation but—

Ms Sharon Murdock (Sudbury): Mr Perruzza supports it, I think.

Mr Perruzza: Yes, I mustered the votes to bring you here.

Mr Runciman: Thank you. I appreciate that. My point, of course, in dealing with public housing is that I guess a sort of additional offence against the public is that the taxpayers are subsidizing these units and in fact taxpayers are subsidizing these dope dens that operate out of public housing.

I'm just wondering what your experience has been, if you can tell us a bit of what you've heard, what you've seen in respect to public housing and what's happening in public housing in respect to the illicit drug trade.

Mr Ian Hood: Public housing no doubt is fertile ground for traffickers because they can easily access the units based upon the economic considerations the public housing represents. There are virtually hundreds of units within public housing across Metro, and I can assure you the figure is not exaggerated, that are being utilized for these purposes. A lot of them are what you call around the welfare time, meaning they open up for 10 or 12 days when the welfare cheques are around and then they close down. A lot of them are full-time, especially the shooting galleries.

We subsidize Metro housing and the units at roughly between \$900 and \$1,800 a month, and that's the bottom line, gentlemen. The bottom line is a lot of crack is sold in public housing because it's cheap. It's one of the most addictive drugs out there and it's one of the most devastating. If you see somebody who's involved in crack cocaine, a young mother, you can be assured that the children are being abused physically, mentally, emotionally, in many cases to the point of absurdity. There's no way possible that there is any way we should tolerate any of this.

I understand the budget right now is about \$1.1 billion for subsidies in regard to housing today. We should not be subsidizing anyone for trafficking purposes. Use the Health Protection and Promotion Act, and when you get them before the courts, use this. Get them out, prosecute them, make them pay, and sentence them. I'm not going to get into the ideas and all the rest of it in regard to what kinds of penalties should be there, but anyone who traffics and creates the misery that these people represent—I can tell you straight, it's a good thing that a lot of the victims are not in government, because we'd be looking at reinstituting the death penalty for people who import who are not involved in addiction. We've got a lot of people out there who are involved in addiction whom

we have to look at as victims, but the people who are making the bucks, the huge dollars, are not involved; they're not addicts themselves. Those people, as far as I'm concerned, should get the full weight of the law because they kill thousands, indirectly and directly. They cost billions of dollars in property damage, and it goes on and on and on.

We're listening to people who come down here, getting back to what Mr Runciman was talking about. Public housing is being exploited. It's being exploited like everything else, but more so. The misery is much greater because the people who are there have difficulty making ends meet. You get involved in addiction, and if you're a low-income person, that's it. There's no way out. You lose your kids in most cases, and in many cases the misery is unprecedented.

As I say to you, we can't subsidize drug traffickers. We've got to come down hard, and there should be no bipartisan politics on this issue. It's too great. There's far too much involved here. People have got to work together collectively to fight for the common cause, to rid our streets and our rental accommodation of these people.

They can't exist in the wintertime in this province. They've got to go inside. They must use rental accommodation. It's an integral part of their distribution network. If you interrupt that, you can create a great problem for these people and make it almost impossible for them to operate. In the summertime it's different, but they're not going to be sitting out there in the wintertime in subzero weather. You just can't do it. You've got to have rental accommodation, and I'm saying that's the key.

Mr Runciman: You were describing some of the low-income people who have to live in public housing and who get addicted to things like crack cocaine as victims. I'm wondering what your organization's experience has been in terms of other tenants in these properties, whom I would describe as victims as well. I just wonder what your reaction is to that.

Mr Ian Hood: I would like to talk about my own family, but I'm going to say something straight right now. We worked to interdict and to oppose the traffickers in Alexander Park and every other community we've worked in, especially in public housing. My family has suffered greatly from these people. My brother lost his wife because they broke into his house. My niece they had for four days because of our activities. When they finished with her, she ended up a basket case.

Interjection: She burnt herself.

Mr Ian Hood: She later lit herself on fire because of what occurred. I don't want to get into that. It's very hard to sit here and talk about your immediate family. We've suffered greatly. We've gone through a great deal with regard to our efforts to try to rid the streets of these kinds of people. Our immediate families have been threatened.

You talk about the small landlord. If a landlord has a dope peddler in there, the first thing he does when he tries to evict, he's pressured in the sense that he's threatened, intimidated, and it goes on and on and on. These people know how to continue on with their efforts no matter what the story is. You have got to come up

with vehicles to stop them. I can tell you right now, this family of mine has suffered substantially. My brother lost his wife. Right now he's taking care of his daughter's children. As I say, when you see somebody who has tried to light herself on fire after they had her for four days, it's a pretty rough deal. So we've gone through the experiences. I won't say what has happened to me over the years, but I can tell you, it's been a very rough ride in many cases. So when I say to you that the need to deal with these people is paramount, the bleeding hearts who come down here and tell you that these people have rights, I say to the people who are coming down with AIDS and all the other diseases coming out of these places, they have got to be paramount and we have to get a balance.

This is what this bill represents. Bring in the Health Protection and Promotion Act when there's disease being spread in these places. The NDP government or no matter what government's in power has got to have the will to use it. Right now they don't want to because there's a problem out there, and that's what may occur if they create too much of a fuss. There's a lobby.

Mr Winninger: It may come as a surprise to you, but actually our party did place a lot of emphasis and does place a lot of emphasis on getting tough on drug abuse and trafficking. In fact, with our first Solicitor General, Mike Farnan, one of his first acts was to set up a task group on drug abuse. George Mammoliti, his parliamentary assistant, chaired it. I was on that committee, and wherever we travelled, from Kenora to Ottawa to Windsor, we heard about the problem of drug abuse and the need to treat it.

One of the first things I said yesterday at the beginning of the hearings was, yes, we do recognize that there is a substance abuse problem out there. In fact, that may be why some of our zealous members asked that this bill go to committee so that we could have hearings on it, because they were very concerned with substance abuse and trafficking.

But that's a very different issue from the issue of whether this is good legislation or not. Many of the tenant advocacy groups and other groups that came here yesterday were complaining bitterly that this bill only deals with tenants; it doesn't deal with property owners. Even those who came to support the bill critiqued it by saying it didn't go far enough because it should have covered criminal acts.

You mentioned the housing authorities. MTHA was one of the first housing authorities in the province to invoke an anti-drug strategy. They pursue those evictions very rigorously and they tell us they have a success rate of almost 100% with the drug traffickers.

Mr Ian Hood: Are you talking about MTHA?

Mr Winninger: MTHA and drug traffickers.

Mr Ian Hood: You will be hearing this afternoon from some of the board possibly who will give you another kind of understanding of what really is going on. I will say this to you, and I want to be right up front with you: There are virtually hundreds in Metro, thousands across the province. This is why it's so big and so

profitable. If they don't have rental accommodation, they don't have access to it and you can shut it down, you can interdict at the most vulnerable part of trafficking, the ability to distribute.

Mr Winninger: The problem is, if you read the bill, all it says is that if someone is convicted of drug trafficking—

Mr Ian Hood: I know this.

Mr Winninger: —the judge may order that their tenancy be terminated: not just for them, but for the family as well.

Mr Ian Hood: But it sends a clear—go ahead.

Mr Winninger: But where does it send them? This is the last part of my question. It may send them to another housing authority. It may send them to another neighbourhood. It may, as one witness said yesterday who actually supported the bill in principle, Mr Verschuren, send them across the street. He had examples of that, where a tenant was evicted for a crime and then just moved across the street. Or the worst thing, to my mind, is that it will send them into the streets, where there will be no surveillance of them and no way to manage the problem. I ask you, is that a solution?

Mr Ian Hood: I'll tell you how long I have been involved in this. Remember George Ben? That's going back a lot of years. Vern Singer? This organization started back in 1965. In 1964 there were 11 cases in regard to trafficking in this province. In 1965 there were over 300 and it has never stopped.

1110

I sat here with George Ben and others way back in 1966 and 1967. We came and we presented legislation here and talked about the spread. At that time people turned around and said: "Look, we've got the police. We've got all these mechanisms. We're going to stop all this." I've seen it escalate from the point where it is an addiction problem to now where it's a chronic health dilemma.

I'll say this to you: There are no mechanisms right now that are perfect. This man has come forward and created a catalyst of discussion here where we can start to do something. A judge will have the means and understanding of the problem. He can make determinations based upon a new area of consideration that'll bring more pressure on.

But I say to you to incorporate the Health Protection and Promotion Act into the Landlord and Tenant Act in a way that can be utilized to close these places down, period. You have to trust somebody, and if you can't trust the chief medical officer of health, Richard Schabas, who asked you to do this two and a half years ago, then who are you going to trust?

Mr Winninger: Is there time to come back to this actual bill again?

Mr Ian Hood: I know the bill, I tell you.

Mr Winninger: Okay, you know the bill.

Mr Ian Hood: I've studied it. I understand there are some shortcomings.

Mr Winninger: Right, but are you also familiar with

the flexibility that's built into the Landlord and Tenant Act?

Mr Ian Hood: Absolutely.

Mr Winninger: Judges can already make these kinds of orders.

Mr Ian Hood: I'll tell you this: You talk about the so-called precedents. A small landlord's intimidated. He isn't going to go to any court and say a guy's trafficking, because he's got to worry about his family. But a crown attorney who's making a determination certainly can. Absolutely.

I won't get into specifics, but there will be a man here who will be appearing this afternoon who has an executive assistant. He's right now trying to evict people who are involved in narcotics. He's going nuts, completely. I'm telling you, the seriousness that he has to go through, the threatening his family and the rest of it, is catastrophic. I'll be leaving here and I'll be going over to try to help him this afternoon.

But they threaten, intimidate. You have got to have a judge who can make a decision and you've got to make sure these people don't claim bankruptcy in a civil matter, because that's what they always do if somebody chases them. You've got to get the courts.

Mr Winninger: No one here is condoning drug dealing. In fact what many of the people suggested yesterday is that we need more community-based ways of dealing with drug dealers. Some of them gave examples of how they took initiatives, and I'm sure you have, to get crack dealers out of their neighbourhoods.

Mr Ian Hood: I've spent 28 years of my life dealing with it.

Mr Winninger: They said that this bill doesn't even deal with the symptoms, but even if it did, it certainly doesn't deal with the root causes. They said, "Why spend money on hearings like this on Bill 20 when you can put the money into prevention?" It makes perfect sense to me.

Mr Ian Hood: I can say to you that I have a great deal of sympathy for people caught up in addiction. I think there should be treatment centres and we can do everything we can to take these people away from the people who are not involved in addiction but are bringing the stuff in. I agree with you. I totally agree with what you're saying.

But I will say this to you: No matter what mechanisms have been out there, and we've advocated most of them, it doesn't work when there's intimidation, when the landlords have to pay out of their pocket to bring these people before the courts. In many cases they lose their units.

There are 140,000 small landlords out there who are getting ripped off right, left and centre. There are thousands of these places. I ask you people around this table to come together collectively, to use your collective thinking. If you don't like this bill, amend it so it has some power. But forget the bipartisan politics here.

Mr Winninger: Unfortunately, we also heard of many landlords who condone these activities on their premises.

Mr Ian Hood: Absolutely. There are numerous.

Mr Winninger: The bill does nothing to—

The Chair: Mr Winninger, we've run out of time.

Mr Callahan: I also applaud Mr Runciman for bringing the bill forward because it does allow us to address a lot of issues that really have to be addressed and perhaps are not being addressed through certain pieces of legislation that the government is introducing.

However, there are a whole host of problems with this bill. One of the specific ones is that the General Division court is the court that has jurisdiction. You probably know, if you know about the drug situation, there are very few of them that go up to the General Division court. Usually they're dealt with down in the provincial court. So you've got a problem there.

In addition to that, I'd like to take your argument a little further. I'm with you. I think the serious drug dealers, the people who are making the bucks at the expense of other people's lives, should be dealt with very seriously. But one of the problems we have in this province is the factor that our courts are so underfunded, understaffed, cases are backlogged endlessly. The people who are charged with drug offences, be it importing, apparently even importers get out now on bail. They roam the streets for years. Many of them reoffend and get rereleased simply because the backlog is so bad.

If a court decides that it can't give somebody who's in custody a trial within a reasonable period of time, it's going to let him back out on the street because it doesn't want to be bothered about it. One of the things this bill concerns me with is the factor that we're now creating one more task for the General Division court, which is already overloaded. It can't possibly deal with what it has.

I've suggested that this matter should be an enlargement of the Criminal Code, which now allows for a judge in sentencing to make compensation orders if someone is injured or if there is damage to property. They should have the power as well to say that this person convicted of this offence is not going to be allowed to return to that house.

The beauty of that is that the judge can determine that the innocent people, the family, the wife and kids, are not going to be thrown out, which might be the case if you go through the Landlord and Tenant Act. Under the Landlord and Tenant Act application, you in fact would find that the judge would make a carte blanche order of eviction and the kids and the wife who've done nothing get thrown out on the street. I don't think any of us here would agree with that and I think we said that at the outset.

But there are significant problems, and I really think it's a matter that should be dealt with through an amendment to the compensation provisions of the Criminal Code.

There was another fellow here before you this morning who was talking about damage to property. That's probably less significant. That's not something I think that you probably concern yourself about; you're more concerned about the drug aspect of it. But even there, in

charges of deliberate damage to property, mischief charges are laid and the court has the power to make that order for compensation and it's filed in the civil court as a claim against that party. It saves having to go to court and wasting court time. It's already done.

As much as I believe that Mr Runciman's bill has given us an opportunity to discuss this, however we vote on this should not be construed by anybody as being in favour of drug traffickers or drug dealers. I think even the government is against that, although you sometimes wonder, the position it takes.

I'm the corrections critic. The position they take in terms of being able to identify people who have come into the correctional system with AIDS to me is outrageous. They talk about workplace safety. That used to be one of the clarion cries of Bob Mackenzie and others, and this is not being partisan; this is simply reflecting on the historical actions of these people. Yet for correctional officers, we can't pierce the corporate veil and find out whether or not these people are possibly a risk to the correctional officers. That to me is absolutely Looney Tunes.

Maybe it's necessary to maintain secrecy for people with AIDS outside of the system, but it seems to me that, once you're arrested, you lose some of your rights. Then you have to look at the rights of the people who've done nothing wrong at all, who are correctional officers, who are in fact being subjected every day to the possibility not of catching measles but of catching death or catching the secondary effects of it, because these people who have AIDS in the jails can give off TB or hepatitis.

1120

We did a hearing, I guess it was in public accounts, into the number of days that correctional officers take off because of sickness.

Interjection.

Mr Callahan: I'm commenting on what this gentleman has said.

I suggested the reason they take off so many days is they're under massive stress. I would be too if I had to go into my job every day and run the risk of winding up not with some simple disease but with something for which tragically there is no cure at the moment. I just find that this government's inactivity or inaction on that, and I'd say this if it was my own government, is unconscionable.

Mr Hood suggests that the section of the Health Protection and Promotion Act should include AIDS. Why not? When I was a kid growing up, if you got smallpox, which they didn't have a cure for at that time, the person from the health department came and slapped a thing on your door and quarantined you. That way we kept it narrowed down to who would get this death-dealing disease. Today we don't do that at all. They come through the correctional system, go back out on the street, and by a geometric progression you have increased the possibility that there will be far more people who will be stung by this tragic, tragic disease.

Hopefully, we'll find a cure for it, but in the meantime, I think it's totally irresponsible, not particularly for the

people working in corrections but working in any area where they are in close contact with people who potentially have this disease. I think this government, if it doesn't do something about it, will in fact rue the day. You're as bad as the landlord situation where the drug dealer is in the apartment. If you don't get him out, he creates havoc and problems for his neighbours.

Mr Ian Hood: Exactly.

Mr Callahan: You're creating problems for your neighbours by allowing these people to get back out on the street and to infect other people. That to me is unconscionable.

Mr Ian Hood: Mr Callahan, you mentioned something about the families. I like to be able to speak from experience. If anyone's in a house who is trafficking, if the husband's doing it, you can be assured in 99% of the cases that the wife is there as well.

I'd also like to say something else. Drugs are all-consuming. Every cent that's available that can be brought to bear for that habit is there. The innocent are the ones who are the victims, the children, when you get into the physical, emotional and sexual abuse that goes hand in hand with these problems.

I can think of not too many homes, in fact none, where there's trafficking where the children are not substantially abused and shouldn't be there. They're starved, they're on high-starch diets, they eat macaroni three times a day, they're abused, people are coming down. The children should be in the care and control of people who can help them and care for them. If you have any sympathy, you have sympathy for the children who are exposed to this. This particular problem is catastrophic.

I'll tell you how serious it is. There are young ladies on Queen Street. If you walk up and down there in the middle of winter, they're freezing out there. They're out there using their bodies to get money to go back to these places in order to shoot up. That's how extreme it is, in subzero weather. They will go to any extent, commit any crime, do whatever is necessary.

Addiction is all-consuming. It is the worst illness I can see out there today, because it encompasses everything. It is affecting the budget here, it is affecting Correctional Services. There is nothing more devastating to a family than somebody who has to produce the moneys. The welfare cheque goes. In many cases they have three or four cheques coming in. In many cases they go ahead and utilize the OHIP cards in order to get drugs to sell. It is unbelievable.

You're right, Mr Callahan, about the recategorization of the virus from 22 to 35 and this government's refusal to do so. But I say to you, under section 13 of the Health Protection and Promotion Act, they can act now if they want to. I say that Mr Runciman has created a catalyst for us to make these discussions and come forward and get into these areas. I think subsection 13(4) of the Health Protection and Promotion Act should be incorporated in some manner into the Landlord and Tenant Act along with this bill. I'd like to thank him today because there are very few committees that will deal with this issue. It seems like it's dead down here.

I thank you for your time and I'd like to say in closing that I hope, if anything at all, you realize there are a lot of lives at stake here. We hope you will think about this and support this bill. You'll send a clear psychological message to these guys out there, along with the fact that you're not tolerating it. This is scaring the hell out of them. Otherwise they wouldn't have so many people down here. I know what's going on.

The Chair: Mr Hood, I thank you very much for taking the time to communicate your concerns to this committee.

PARKDALE COMMUNITY LEGAL SERVICES

Mr Raymond Kuszelewski: I hope to be brief in my presentation. It's basically in two parts. I've handed out written submissions which I won't go over in any great detail but which I will generally highlight in my presentation. I'd also like to make this oral presentation, which will give you an idea of the direction from which I come and the direction which I hope this committee takes with Bill 20.

By way of introduction, Parkdale Community Legal Services, where I've been a staff lawyer in the landlord and tenant group for six years now, deals and has dealt with primarily tenants for almost 25 years. We have a very good view of what it is to be a tenant in a variety of living accommodations, from traditional high-rise buildings through to illegal basement apartments through to unlicensed rooming houses. We see on a daily basis the kinds of situations which tenants find themselves in and the kinds of situations where tenants have to react to behaviours of landlords, whether be legal or illegal.

We are quite happy with the Landlord and Tenant Act and we come to you today with the position that the Landlord and Tenant Act, as a complete code that deals with landlord and tenant relations and which was enacted in order to bring those relations up to an even keel so that both sides had rights and obligations, is the avenue through which the desired goal of Bill 20 should be addressed.

The reality on the streets for tenants is that illegal evictions take place routinely. The Metropolitan Toronto Police Force is not up to speed on even who is covered and who isn't covered under the act, so that illegal evictions quite often go unnoticed. There are constructive evictions, and it's something you ought to turn your minds to when you're dealing with Criminal Code matters. Bail conditions, parole conditions, sentencing conditions can all constructively evict somebody simply by saying, "Don't go back there." Those mechanisms are already in place. Those mechanisms are under the umbrella of the Criminal Code of Canada and they belong there.

Section 107 evictions, on the other hand, the ones that the Landlord and Tenant Act deals with, deal with evictions on a very low standard of proof. A landlord need only believe or have reasonable grounds to believe that a tenant is committing an illegal act and that triggers that eviction process, so that the process that Bill 20 hopes to introduce, which in my respectful submission is terribly flawed, is already in place.

I have appended to my written submissions a court case from as far back as 1988 which shows how novel it was that a then Ontario district court judge, now an Ontario Court (General Division) judge, can with his inherent powers of equity deal with the very situations that you are hearing about today without encroaching—and I believe that's what's happening with Bill 20—upon the powers of the Parliament of Canada, which has enacted the Criminal Code of Canada and the Narcotic Control Act.

It's quite clear that the Conveyancing and Law of Property Act, a piece of provincial legislation, gives tenants the same rights of quiet enjoyment as the owners of property and landlords. The Landlord and Tenant Act is based on that principle that because you are a tenant does not mean that you should not have the same enjoyment of the property that you rent and that you use as your home as a person who can afford to own their own home or who can afford to rent you your home.

1130

The Landlord and Tenant Act is based on that principle of quiet enjoyment. If you look at the privacy section, section 107, which creates the various heads of eviction, the offence sections that tell you that it's improper to withhold vital services, you will very clearly see that what the act is directed towards is maintaining rights and obligations with respect

to the issue of quiet enjoyment. It is that basis upon which not simply drug traffickers or dealers or users but anyone who in the mind of the landlord is creating something akin to an illegal act can be evicted. One doesn't need an entirely new process.

If you look through the written submissions, again I'll just very briefly take you through the position that I take, which is that the Criminal Code has already created criminal offences and it is within the purview of the Criminal Code to draft punishment for those offences. What Bill 20 is attempting to do is draft punishment where punishment is already drafted and to enforce punishment that is not within the purview of the province but which is within the purview of the powers of the federal government.

It's clear. Section 6 talks about that. It tells you quite clearly that it's only federal enactments that can create offences and federal enactments that can create punishments. Obviously Bill 20 is only a provincial bill and can only deal with provincial offences.

The Criminal Code speaks of sentencing. It tells you again that in sentencing you can only look at the wide range of sentences that are able to be presented to the sentencing judge because the sentencing judge has to exercise discretion. Even if Bill 20 is enacted as it stands or at least its principle is enacted, whereby you can put forward an eviction as one part of the sentence, the discretion will still lie within the sentencing court to decide whether or not that is an appropriate sentence. So you haven't necessarily come any closer to the goal of a full eviction than you have at this present time, and again section 107 of the Landlord and Tenant Act doesn't give you that anyway.

Landlords always have civil remedies. It's clear in the Criminal Code. In terms of taking a landlord's application for an eviction to a sentencing judge, if you look at section 735 of the Criminal Code, it talks about victim impact statements at sentencing. Section 735 says clearly that only a person directly involved in a crime can give a victim impact statement. It's arguable that a landlord is not directly involved in the behaviour of somebody who is either trafficking or dealing in narcotics on his or her premises.

Again I fall back to the position that the Landlord and Tenant Act is the place where you should be, where if anything has to be done it can be done there, but because the burden of proof is so low, the standard of proof is so low, it's already in place. It only means that it ought to be used more often.

As the case that I have appended shows, it can be used in a novel way. The MTHA, the Metropolitan Toronto Housing Authority, has been historically the authority. The landlord who has consistently gone to court on these types of issues, if you were to read the half-dozen or dozen MTHA cases that have been reported in the various reporting services you would see how the courts have dealt with the standard of proof, and it is much lower than the one that you're submitting and that you're dealing with in Bill 20.

Very briefly, I'd like to go over the actual bill. It was only late yesterday afternoon that I received the amendments to Bill 20 but they don't change my particular position on it.

If we go very quickly through it, section 1 speaks of people convicted under sections 4 and 5 of the Narcotic Control Act. For acts that were committed in connection with premises, as a lawyer it is very difficult to state what "in connection with" means. The Landlord and Tenant Act, on the other hand, says quite clearly "in or about the premises." It's clear that it's meant to regulate the behaviour in or about the premises, and those terms have been defined in the court in dealing with section 107 of the Landlord and Tenant Act. The bill generally is very vague, but it is that kind of phraseology that makes it unworkable.

I wonder generally, with respect to Bill 20, who it is targeting, because one thing that the bill doesn't do is tell us who in fact is going to be the target of the applications. Is it simply the convicted person or does that mean that the entire family is going to be targeted? Does that mean that everybody associated with the premises is going to be targeted?

As well, and I'm sure that you've heard this from other people, because we're only targeting tenants, are we creating a head of discrimination because property owners are not the subject of the very same penalty that you're imposing?

Mr Jackson: Yes, they are. You know that, Ray. Come on. Search and seizure. You've got properties, transfers. There are laws.

Mr Kuszelewski: My point remains, though, that Bill 20 in and of itself is targeting a particular group of people—

Mr Jackson: I agree.

Mr Kuszelewski: —over and above something that is already in existence for all people. In other words, the tenant trafficker is still subject to search and seizure, so that if he has a yacht docked at Ontario Place, it goes whether he's a tenant or whether he's a property owner. But in this particular case, he loses his home or his place to live. If that means his family loses its place to live, are we isolating? We're not even sure who we're particularly targeting.

Subsection 1(2), very quickly, the prosecutor may make a submission. What's the guarantee that they will make a submission, and whose discretion is it at? Is it at the discretion of the particular landlord? Is it at the discretion of the particular crown? Is it at the discretion of the police officer in charge of the particular case? Who makes that decision? It's not clear how the process would in fact take place. Again, my bottom line is that the bill is encroaching on parliamentary authority and it won't stand. But should it stand, there are particular logistical problems and legal problems with it.

Again, it becomes duplicitous when you get to section 4, because it then gives a landlord an opportunity to apply to the General Division for exactly the same thing you're giving the prosecutor discretion to apply for. So does that now create a system of double jeopardy, where the prosecutor may, might, may lose or the landlord still may, might, may lose, and then he can still go under the Landlord and Tenant Act to evict? How many kicks at the can do we get before we say, "Look, it's not working"? I think the process just isn't tight.

The other thing is that you may create a problem if, for instance, the prosecutor does make a submission and it is rejected. Are you estopped then, as a landlord, from taking the same process to another court to try to get the same remedy if a first court has already said, "No, you can't do it"? What about the landlord and tenant court at that time? If the landlord fails under Bill 20, can he still fall back to section 107 or is he estopped from falling back to section 107 to try yet again? It's unclear.

The appeal process: It's clear that under the Landlord and Tenant Act appeals are taken to Divisional Court, but in criminal convictions from the General Division you're going to the Court of Appeal and not the Divisional Court. It's clear as well that if you're dealing with summary convictions—and I understand that perhaps you're not going to be dealing with summary convictions—summary convictions then go to a summary conviction appeal court which is at the level of the General Division. But then again you have to go to the Court of Appeal if you wish to appeal those. So there are a number of avenues that seem not to have been explored in terms of just the legal process.

With the amendments, again, the simple criticisms that I made are still in effect. The amendments to the sections don't change the fact that there may still be three ways to terminate the tenancy, that it still may be duplicitous and certainly unclear as to who has the first right to do what and what the result means if it fails at the first instance and the second and the third.

Actually, the amendment to subsection 1(3) of the bill

where "The application shall be heard immediately following conviction and sentencing," now creates yet a third tier. Is this a secondary sentencing, and what effect is that going to have if somebody challenges the fact that they are now being sentenced twice? If they've been sentenced under the Criminal Code and then you make an application to that very same court saying, "Now we want you to add on to the sentence," is that in and of itself not double jeopardy? So I think the amendment itself has created yet another tier.

1140

There certainly is difficulty with the fact that subsection (9) speaks to "this section prevailing over anything in the Landlord and Tenant Act." I understand that was to be amended as well, but I don't think that changes the criticism that we haven't taken away the fact that there still is section 107 and you'll have to somehow compare it to what Bill 20 is asking you to do and also compare it to what the Criminal Code has already got as a power of sentencing.

The basic position is that I think the Landlord and Tenant Act is the way to go if anybody wants to level criticisms. I have heard some of the remarks earlier. Yes, the courts are overworked. Unfortunately, yes, there is only one motions room being used in the General Division court for landlord and tenant matters, and there are some 30 or 35 every day. There is no doubt that there could be more funds put into that particular aspect of landlord and tenant relations, that is, the execution of the court issues.

But I think that is where it should lie. I think that if there are amendments to be made, that is the forum in which they should be made. To create yet another piece of legislation which will do nothing more than, as you can see, give lawyers something to talk about and criticize does not seem to be effective in dealing with what everyone does agree is a very real problem.

But what a great number of groups and individuals have for remedies are very different types of remedies. I know some of that has been brought out in the discussions. Do you take the hard line or do you take the soft line? Do you go for harm reduction or do you just go for cutting it off altogether?

Those are some of the discussions that take place even in landlord and tenant court when landlords make those types of applications. I think that's the forum where it ought to remain, and I ask you to take this into consideration.

Ms Margaret H. Harrington (Niagara Falls): I appreciate your laying out very clearly that you have these problems with the bill, certainly that the punishment is already there and that this is federal jurisdiction.

What I want to ask you is, first of all, MTHA, you said, is fairly successful in dealing with this type of issue. You also mentioned that they have a lower burden of proof when they are going after an eviction. I think you're also aware even from listening this morning to the previous presenters that the public is very concerned, and I'm sure that's going to be a growing concern.

What would be your recommendations to us as the

provincial level on how to deal with this in a more effective manner? You're saying that maybe legislation is not appropriate. How do we get at the problem?

Mr Kuszelewski: The discussions I have had with various social service agencies and housing providers is that they are taking a better look at having their own constituents come up with the resolution to the problem. Even MTHA and Cityhome and the other social service housing providers are doing exactly the same thing. They are allowing their own constituency to deal with a problem that they find onsite, and that seems to be a more workable solution because it allows for varying points of view to come and speak directly to the issues as they face those individuals.

Ms Harrington: Yesterday we had a woman from the Bathurst Quay area of non-profit housing, and she talked about that idea of it being a social problem and having co-ops deal with it within their own mandate. Do you think that is an adequate enough response, or should there be more laws involved?

Mr Kuszelewski: I have a personal opinion, but given that I work for an agency that probably deals with this on a broader scale, I also have the benefit of having heard probably from all sides as to what they see, certainly the position at the Addiction Research Foundation, for instance, that we ought to be dealing with it as a harm reduction as opposed to just cutting people off. We've seen health centres that say we ought to have methadone clinics as opposed to simply letting people deal with it as cut off cold turkey or just live off the street the best you can.

It seems that there are some answers out there, but as yet the discussion hasn't taken in all of the players. We have people who are in specific agencies and deal with specific groups of people who have very specific ideas of what they would like to do, but we haven't brought in residents' associations, we haven't brought in all the different tenants' associations, we haven't heard from the entire group of people as to how we should deal with the abuse of drugs, and we can take that to the abuse of alcohol and other abuses we're finding in society that are coming out at large.

But my bottom line seems to be quite clearly that we ought to be taking it to the constituents, as opposed to saying we as experts know this is the answer, because other tenants live with this and have to deal with it just as well. We're not simply talking about landlord-tenant relations. We're also talking about tenant-tenant relations and tenant-community relations and tenant-property owner relations.

There are a lot of relationships, and until we hear from all of those players, I don't think we're going to get a clear answer, but I think we have a clearer answer in so far as we must at least ask those people what their view is and how we ought to deal with it.

Ms Murdock: I'm glad that you state it, because I know I did not support Mr Runciman's second reading, and at the time most of my reasoning was based on the onus that was going to be put on the rest of the family. Since then, of course, once you get to look at it and digest it, the whole issue of the overlapping jurisdictions

and the existing law as it is with a lesser standard and so on obviously legally comes into it.

But I just read the appended case, and that sort of addresses the whole issue of what Mr Callahan had asked earlier and some of the concerns of my own caucus colleagues in terms of family, in that, just quickly to summarize it, it's a housing situation where the son of a mother who was the tenant is accused on two occasions of trafficking. The mother doesn't know about the first one but does know about the second one. The daughter also lives with them. She's at university.

The judge finds basically that the mother, knowing about the second one, then was knowing that an illegal activity was occurring, and that the illegal activity was occurring on the streets of the unit, not in the property or what we consider property or on the premises. The judge considered that that was still part of the premises.

That, to me, would seem very strong to kick the mother out because her high-school-aged son is selling drugs. In this case the judge decided that, after being a tenant for 11 years and so on, with conditions that the son not live there etc, they allowed her to stay, as long as those conditions continued.

My concern here is that this is one case. You deal with this all the time. Is this the norm? Do judges make those kinds of considerations in your other case law?

Mr Kuszelewski: Again, MTHA's probably the best authority around because the volume is there. If you look at their particular group of cases, you can see how the courts deal with it, and because it's a public housing authority, the courts take a particular view of it as opposed to a private housing supplier.

But to answer your question, this is unique. This is a unique and novel decision. You probably wouldn't find another one like it. Some judges go to the extreme and say, "No, everybody's gone," but you can see how the judges can be convinced and that judges are convinced in fact that there are other novel remedies that can be taken, short of something that becomes a sentence in a criminal matter, because this is equity that we're dealing with. We're not dealing with black and white, burden of proof, standard of proof.

1150

Mr Gerry Phillips (Scarborough-Agincourt): I'm trying to figure out your concern with the legislation, because I heard three different concerns that sounded potentially contradictory.

One was that under the Landlord and Tenant Act already there is an easier way of evicting somebody. I took that to mean from you, "Well, we've got to deal with these scoundrels, and if you allow this bill to pass, it will make it potentially more difficult to throw somebody out."

Then I heard you say that your concern is that this is a federal matter, so we're infringing on the federal one. The public don't have a lot of sympathy with those arguments. They just say, "I've got a problem. Stop your jurisdictional feuding, because you're just hiding behind that." Then the third one was that there may be some internal flaws in it.

Can I take it from your remarks that you think it is a big problem but you would prefer to deal with it through the Landlord and Tenant Act and not through this one?

Mr Kuszelewski: I don't know how big a problem it is. I agree with you that substance abuse is a problem in Toronto, Metropolitan Toronto and the province of Ontario. I do believe it ought to be dealt with under section 107, because that's the section of the piece of legislation that deals with landlord-tenant relations and intertenant relations.

Why I may have sounded contradictory is that lawyers like to talk in the alternative. My first position is this thing won't fly. My second position is if it flies, it's going to have a lot of problems and still may not fly. So my bottom line is always section 107 of the Landlord and Tenant Act.

Mr Phillips: I think your suggestion was, let the tenants work this problem out. That's what I interpreted—

Mr Kuszelewski: There's a great deal of movement in that direction.

Mr Phillips: Let me finish my remarks. In the communities I represent, that might be laughed at. Let's say you've got a four-unit building. Most people are frightened to death of somebody dealing in drugs, just because it's a fairly serious business. If I were to go to a community and say: "Why don't the four of you sit down and work this little matter out? I'm sure the four of you could have a little meeting, and you can persuade the drug dealer to come around." You seem to be in a different world than I am when you suggest that.

Mr Kuszelewski: You may have narrowed it down too far. One of the positions that I try to advance is that communities are bigger simply than the tenants in a particular apartment building. So to take your example, if there's drug dealing going on, it's affecting more than the four tenants in that building. If it's as great as you're suggesting, then that means there's a lot of traffic coming in and out of that building so that other neighbours are being bothered, other community members are being bothered. It becomes a community issue. It becomes an issue where maybe one goes to the community relations officer or the community liaison officer of the local division.

There are a lot of novel ways to deal with that particular type of problem. I'm suggesting those are out there and we ought to pursue them. But the bottom line still remains that if that particular landlord is having a problem in his building, with only four units, he still can just hand out a notice and immediately go to court and say: "This is what's going on. I've got pictures here of people walking in at 3 o'clock in the morning every night. Something's going on. Other neighbours are complaining about it." Mere suspicion is enough to trigger a section 107 eviction.

Mr Phillips: If I was a landlord and came to Parkdale, I assume you would take on my case?

Mr Kuszelewski: No. We deal only with low-income tenants. We deal with the low-income community as a whole. The one area of law that we deal with almost

exclusively is tenant rights. There is a landlord self-help centre, which is a legal aid clinic for small landlords.

Mr Phillips: So Parkdale can't take on landlords?

Mr Kuszelewski: No. It would be a conflict for us given that we do everything in terms of tenant advocacy.

Mr Jackson: Ray, how many tenants in a year would your clinic assist? Just a number, approximately.

Mr Kuszelewski: I can tell you that we get 300 people a month coming through the clinic.

Mr Jackson: How many of those would be approaching you with the concern under the Landlord and Tenant Act that their right to enjoyment has been disrupted because they live next door to a crack house?

Mr Kuszelewski: Not so much next door to a crack house; possibly in the next apartment to a crack dealer.

Mr Jackson: I'm sorry, in the next unit. Thank you, yes. Would you get 2%, 10%, 1%? Approximately, just a rough sense.

Mr Kuszelewski: It wouldn't even be 1%, but I can tell you that most of the drug dealing happens in illegal rooming-houses. It's not something that seems to have filtered into the traditional high-rise. It's something that seems to be in units that the city of Toronto is already having problems with.

Mr Jackson: What do you advise those tenants? They are being victimized by the criminal activity in the adjoining unit.

Mr Kuszelewski: That's right.

Mr Jackson: What course of action, as a legal aid clinic advocating for those tenants, what do you say to that specific cohort?

Mr Kuszelewski: We advise them to take that problem to the landlord and have the landlord deal with it because in our view it's a landlord problem.

Mr Jackson: Do you advise them to go to the police?

Mr Kuszelewski: We don't particularly advise them to go to the police because we want to try to advise them as to what their remedy is, given that they're losing their quiet enjoyment.

Mr Jackson: You don't advise people when there are illegal activities to notify the police?

Mr Kuszelewski: Certainly we'll give them that option, if it's an illegal activity, but the one thing you have to understand is that if a person comes and says, "Look, there are people going in and out of this apartment at 3 o'clock in the morning," what am I supposed to say?

Mr Jackson: I understand. I appreciate the fact you may have inadvertently assisted the committee, although you may not have wished to. Many of the legal aid clinics that have come forward have blasted it, but you've actually come with some very constructive, insightful comments which will be in fact, if we can get legal counsel to amend them, helpful. I wanted to thank you for that.

I also wanted to thank you for hitting down the notion, which I've been trying to get across for two days, about how this is a not a victimless crime. It is deemed a

victimless crime by virtue of the landlord and tenant relationship, but if you through your mandate or I through my interest in this bill, for those tenants who are victimized—you'll realize that we are seeking some mechanism which is court-based to sensitize a judge to the impact of this criminal activity, that the presence of an individual is having a deleterious effect on the social fabric of that community.

You were present in the room to hear the concerns from tenants. I want you to know that nobody of that group of six people was here as a landlord. They were here as tenants saying, "We've lost a family member, there's been death, there's been AIDS, there have been other things."

The bill provides a second alternative to assisting in the process of an eviction, which is a form of removing this criminal activity and the persons responsible from their impact on other tenants, in particular low-income tenants. Victims' impact statements would be permissible under Mr Runciman's suggested approach, which can be amended, but under the pure approach of the Landlord and Tenant Act—no, I'm sorry. Under the simple Criminal Code approach, which is to look at the crime against the state, there's no concern for the impact on the immediate community, which you say is where the solution should be.

Mr Kuszelewski: But that's why I say it lies with section 107 rather than with the Criminal Code.

Mr Jackson: Section 107 is the pressure, and the landlord becomes a victim the moment his rent is reduced because he's failed to convince a judge that there are criminal activities going on and he's unable to evict the tenant. Whether you say that it's an easier way to get a conviction or not, the only way the landlord becomes a victim is when he suffers an economic loss as a result of the court's failure to accept responsibility or to rule that the safety of those citizens in that complex should be upheld.

The Chair: One final comment from you, Mr Kuszelewski.

Mr Kuszelewski: But certainly, wouldn't a prudent landlord immediately move to remove the trouble from his building? The quickest removal will come under the Landlord and Tenant Act. You've heard from other people how long the criminal justice system takes in criminal matters. It may be a year, it may be two years.

Mr Jackson: Agreed, Ray, but you also heard that there is serious intimidation. These people are paying the rent. They're well organized.

Finally, Mr Chairman, only to get half the time that was allocated to your colleagues in the governing party—

The Chair: Don't do that, Mr Jackson, because if you do that, then you'll irritate the Chair.

Mr Jackson: Well, I don't—

The Chair: If you would allow me, on a previous speaker we allowed your caucus 10 minutes with the intervention of Mr Perruzza. I didn't say there, stop with your questions. If you will allow this balance to go on, we'll try to accommodate all sides.

Mr Jackson: I appreciate that. My final question—

The Chair: No, we've gone way out of time. I thank you very much, Mr Jackson. Mr Kuszelewski, we appreciate your presentation, your suggestions and your comments today.

The committee recessed from 1202 to 1411.

METROPOLITAN TORONTO POLICE
CENTRAL DRUG INFORMATION UNIT

The Chair: I call the meeting to order. We invite the Metropolitan Toronto Police central drug information unit, Detective Sergeant Craig Hilborn. Welcome.

Mr Craig Hilborn: Good afternoon. I was just apprised of this request on Friday and, as such, a presentation addressing this is going to be remiss. What I can do for the committee, however, is touch on specific issues that we, as a law enforcement agency, run into, problems that arise not only with officers doing the investigations but problems that we run into with complainants and the citizens who are involved in primarily high-rise facilities within Metropolitan Toronto.

Crack cocaine is our number one drug out on the street. It supersedes any other drug that we're seizing, including marijuana. Our seizures were well over 2,500 just in crack alone—I think the next one down was about 1,400 and some for marijuana—so you can see that it is our number one drug on the street.

The distribution, unfortunately, of crack cocaine is all too often found in and around high-rise premises within Metropolitan Toronto. The problem that we run into as a law enforcement agency is trying to police a high-rise building. It's almost an effort in futility. We run into problems with security. It's hard to have an undercover officer go into a high-rise complex and maintain proper security on him. The policing of such premises is obviously very difficult.

What we are finding is that there are a lot of transients who are using various high-rise buildings for the distribution of narcotics or illicit drugs. Again, I refer to crack as being the prime source of our problems out there.

The connotation of the crack house that we see all too often out on the airwaves, especially down in the States, of small residential buildings that are boarded up, they've got barred doors and windows, we don't find very often in Toronto. Most of the crack houses are very transient and you'll find them for the most part in high-rise buildings.

It's not inconceivable to have two or three apartments in one complex that are involved in the same drug distribution network. You'll have one apartment that could be used for doing the actual contact, you could have the other apartment that actually makes the crack cocaine, and then you'll have the other that will strictly store the money. So it's conceivable that you can have three apartments that are involved in the one network involved in distributing this.

They are very transient in that the amount of coke required to make crack cocaine for that specific night's transactions is very small. Most crack dealers will use very small quantities of cocaine hydrochloride to make their crack and they'll make enough just for the distribution, so you don't have an illicit laboratory set up, you

don't have glassware and chemicals and everything else.

The manufacturing of crack cocaine is so very easy and very basic. You do not have to have a special IQ to make it. It's very easily made. If you have cocaine hydrochloride, which is the powdered cocaine, crack is very easily made. It's very transient and that's why I would like to emphasize the fact that where we are finding a lot of the distribution of crack cocaine is in high-rises, again primarily because it's extremely hard to police, it's very easy for them to maintain security and basically they've got a wealth of prospective clients within that area and prospective associates that would help them out in the distribution of it.

I would think right now that if I was a tenant, I would be more concerned with the propensity for violence involved with the distribution, and again, I keep referring to crack because of the violence associated with it. A lot of the homicides that have taken place in Metropolitan Toronto are attributed to drug dealing and specifically crack cocaine.

Crack is a very addictive drug. Consequently, people who are hooked on it for all intents and purposes generally have a hard time maintaining employment. Thus, if they're going to afford the drug, they've got to come up with the money elsewhere and unfortunately that usually is through other criminal activity. That could be a purse snatch from a tenant in the same building. It could be a B&E into a tenant's apartment, even extortion. We get into prostitution, both male and female. The crime associated with crack not only tears down the community as a whole but the specific premises that are involved in the distribution of it.

Just touching on it briefly, I think there's a major problem and this is something that has come about recently. Crack cocaine is basically a new drug. It started to make a presence in Toronto in 1986 and it slowly increased until 1991 when it surpassed all the other drugs as far as seizures are concerned, and it's maintained that and it doesn't look like it's going to go away very easily.

Our concern is that we have a lot of young kids who are getting involved in it because of the initial cost to it. You have a lot of young users. Consequently, you're getting a lot of young people who are becoming very addicted to it. As I said, if you've got an addiction, then you've got to supply the addiction, and unfortunately, we have a lot of youth who are getting involved in other criminal activity as well.

I grabbed a couple of the morning reports that come across my desk from different drug squads. I grabbed two. One was from 4 District drug squad and it was a morning report for March 1. What had happened was that 4 District drug squad polices the Scarborough area. They were doing an undercover operation and they were working on this individual. He was working in the Scarborough area. They ended up executing a narcotics search warrant at 4400 Jane Street, at an apartment there, and they ended up finding not only crack on him when he was arrested, but they went back to the apartment and found a substantial amount of crack at that premises. At that time, his mother, who was age 40, was charged as well, jointly, with this offence.

The reason I'm pointing this out is that it shows you how transient this problem is, the fact that he's dealing his narcotics or crack in Scarborough, his residence is in one district, or North York, out on Jane Street, and his mother's involved as well.

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This type of legislation, if it was in place—I know there are concerns about a member of the family being charged and why should the rest of the family pay the price—would be an ideal situation. A bill like this would be effective in that you would be able to have the mother and son evicted from the premises, and totally justifiably.

Another incident was down in 5 District, in the Wellesley-Parliament area. There was again an undercover investigation involving crack. This report just came across my desk this morning, so this happened yesterday. They did the investigation and they went back to do a search warrant on the place when they wanted to arrest the accused, and when they went back there they found that the sheriff had already evicted them from the apartment.

I'm trying to give you an overview of some of the problems these drug dealers are causing. As I said, it really makes it extremely difficult to police. I would think the tenants would jump at the opportunity to try to purge problems within their premises by getting rid of people who are involved in the distribution of drugs, specifically, as I said, of crack cocaine, which is such a dangerous substance. We have numerous police officers who are assaulted, male and female, thrown down flights of stairs in high-rises, just trying to do proper policing there. So I would think that the tenants would welcome an opportunity to alleviate this problem.

I've been touching on crack cocaine. A drug that's raising its ugly head again is heroin. The distribution of heroin is escalating within Metropolitan Toronto. We're extremely concerned about that because of the addictive properties, the associated crime to support their habits. I can't see this problem going away readily. I think it's going to be a problem that we're going to have to live with and try to adjust to.

Cocaine and heroin are very addictive substances, especially cocaine in the crack form. For heroin, the purity levels that are out in the street right now are astronomical. I think the average that went through Health and Welfare labs analysed at 72%; the number of heroin deaths we're having in this city is basically attributable. As to the addictive properties, the problem that these two substances are causing, not only to law enforcement but to the citizens on the street, I think any type of legislation that would help to remove them from their premises or their presence would definitely be beneficial.

As I said, I was given very short notice on this. I apologize for not having proper handouts, but I thought I would be able to answer the committee's questions if it had anything specific in relation to the police and enforcement in that area.

Mr Callahan: A lot of guns found when dealing with crack cocaine?

Mr Hilborn: Yes, very much so.

Mr Callahan: Arsenals? Not just one or two guns.

Mr Hilborn: Quite often arsenals, yes. It's a sign of the times.

Mr Callahan: Some of the problems we have will have to be worked out by the committee when we go through clause-by-clause. What's the percentage of drug charges under sections 4 or 5 that are dealt with in the provincial court as opposed to going up to the General Division?

Mr Hilborn: I guess everybody's under certain restrictions, and the federal Department of Justice, which is responsible for doing the prosecutions, does its utmost to keep it down at the provincial level so that most charges would be dealt with down at the provincial level.

Mr Callahan: Can you give us, either anecdotally or factually, the percentage? Would it be 60% down there, 40% up in the General Division?

Mr Hilborn: I would hazard a guess that it would be much higher than that.

Mr Callahan: Much higher, so probably about 80%.

Mr Hilborn: Our courts wouldn't be able to handle that.

Mr Callahan: I guess 80% then in the provincial court and 20% up there. You realize that this bill, for constitutional reasons, the only time that it would be applicable, and there doesn't seem to be any way to solve that, would be if the matter was in the General Division.

Mr Hilborn: Yes, I was reading that.

Mr Callahan: We'd only be catching about 10% or 20%. That's a problem.

Mr Hilborn: Yes. Again, because of the cutbacks with the federal Department of Justice, the restrictions in the courts and everything else, they are trying to expedite drug trials and they're doing that by primarily keeping them down in the lower courts.

Mr Callahan: They proceed summarily and don't give the accused an option to take a trial.

Mr Hilborn: Exactly.

Mr Callahan: The other side of the coin too is that presently, as you are aware I'm sure, under the Criminal Code there is a provision where the sentencing judge can make an order for compensation for property that was destroyed or injuries that were sustained by a person who was a victim of crime.

Mr Hilborn: Yes.

Mr Callahan: It would seem to me, and I've suggested this, that perhaps the place this type of provision should be is by enlarging that provision to provide for eviction in the appropriate case. It serves a number of purposes. It gives the judge the opportunity to decide to kick one or all of the people out rather than just throwing everybody out on the sidewalk, people who may be innocent as well as the felon.

The other concern we have is a question of timing. As you're well aware, I guess in Metropolitan Toronto, what's the time frame between charging and the time the matter is dealt with, on an average?

Mr Hilborn: It's generally within a 60-day period.

Mr Callahan: Is that right?

Mr Hilborn: Yes. It has been expedited. There's been a lot of effort through the judicial system, both with the courts with the federal Department of Justice in relation to drug charges, even full disclosure has been a major area that has been addressed, and to expedite the courts, as I said because they are backlogged and they have been very, very slow. The Askov decision really turned everything about and put it in the proper direction.

Mr Callahan: How would this act assist the police in terms of locating and busting drug rings in apartments? Would it make any difference in that regard?

Mr Hilborn: This type of legislation, I would think, would follow the fact that we'd already located them. Where I would think it would be beneficial would be that it may not make certain premises susceptible to the distribution of drugs. As I mentioned at the outset, enforcement in any type of high-rise building is a headache. It's extremely dangerous. It's something that we prefer not to do, but unfortunately, Metropolitan Toronto is a high-rise municipality and we have a lot of apartment buildings that we have to police, and we do have problems with that.

Mr Runciman: Dealing with what Mr Callahan mentioned about only 10% or 20% in the General Division court, I'm assuming, and maybe it's an incorrect assumption, that those cases that do end up in the general division are the more serious types of cases. Would that be fair to say?

Mr Hilborn: That's right.

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Mr Runciman: Very serious people. Wouldn't it be helpful to the police, I would assume, if the crown were able to ask for an eviction of a dealer involved in two to three units? You talked about multiple units, which can't happen under the Landlord and Tenant Act, I might say. So the court could deal with someone who's in multiple units through this legislation, where they can't deal with it under the LTA.

Mr Hilborn: That's correct. As I said, referring to the distribution of crack, it's very transient and it just makes it easier for them to use various apartments in there. As I said, it can vary. The one apartment that's making the crack one specific night, the next night may be looking after the money. They're very smart and, as I said, it makes it extremely hard.

Mr Runciman: I just want to touch briefly—we don't have an awful lot of time, which is regrettable—on some of the testimony we've heard. We had a so-called tenants' representative here from the Bathurst Quay area who seemed to be primarily concerned about the police treatment of visible minorities and said that she wasn't aware of any serious problems with drugs in that area. I think it was 51 Division she mentioned. What's your experience in terms of drugs in 51 Division?

Mr Hilborn: You've got to be careful here.

Mr Runciman: Is it a serious problem, I guess, is what I'm saying?

Mr Hilborn: Yes, it is.

Mr Runciman: In apartments it's a serious problem?

Mr Hilborn: Yes, very much so.

Mr Runciman: Okay, that's fine.

Another response from some of these groups that purport to represent tenants—and I suggest if they poll their tenants they won't support the positions we've heard through these last couple of days—is that they've indicated in their view on the implementation of this legislation, dealing with people found guilty and responsible for selling drugs to many innocent people and purveyors of disease and crime etc, that passing this legislation would be cruel and unusual punishment and a violation of their rights.

I'm just wondering, as someone who works with people out on the front line and not only has to work with dealers but sees the fallout in terms of the victims and what the fallout is, what's your response to that kind of position?

Mr Hilborn: I'm really almost appalled at that type of attitude, because the Metropolitan Toronto Police work very, very closely with community groups. Community groups are coming to us for assistance. They're fed up with the distribution of drugs, the scourge that it's putting not only on to family members but to their community as a whole. It's common knowledge that's the problem arising in the school systems right now throughout Metropolitan Toronto. The community is basically fed up with drugs. I would think any type of legislation that would try to eradicate or remove the cancer from a facility that I'm living in would be extremely beneficial and would be welcomed.

Mr Runciman: Our last witness in the morning, from the Parkdale Community Legal Services, suggested that instead of doing this sort of thing we should be having community meetings of tenants and get the drug dealers into these meetings and convince them not to do it any more. Perhaps you could respond to that, but also tell the committee about the explosion that occurred in an apartment that fortunately didn't kill a lot of people but could have, and that sort of thing that's happening.

Mr Hilborn: As I mentioned earlier, I have a little bit of concern with the actual application point, subsection 1(1). I think it should be expanded to include the food and drug section, schedule G and schedule H, primarily because you can have somebody who's dealing large quantities of LSD out of an apartment and this legislation wouldn't cover it, because LSD is found in the Food and Drugs Act; methamphetamine or speed, there are numerous other drugs that are distributed out on the street that should fall within the parameters. Again, it would be under the trafficking and possession for the purpose, and not a possession charge.

I would think that if this was brought into place, it would be extremely beneficial to the occupants of the premises. I think they would welcome it. I don't know who was here representing them. Obviously they aren't attending the same meetings that we are, or the community groups that are requesting assistance from the police. I just don't understand it. I think that if you've got a

healthy neighbourhood or facility, then you'd want to maintain that. If that means removing drug dealers, then I would think they would welcome that or should welcome it.

You have to understand that the Seized Property Management Act, which has been passed in Ottawa, can take a house, can take anything away from convicted drug dealers, so I don't see why legislation that is going to remove people upon conviction from a facility or an apartment building or something is really detrimental to other people.

Mr Winninger: Thank you for your presentation. You've certainly provided a lot of detail on the crack cocaine problem and the problem with drugs and drug trafficking in general.

I didn't hear any presenter yesterday or today, nor have I heard any members on this committee, in any way suggest that there is no problem or suggest in any way that we don't need to deal with it strictly. But what we do hear again and again through the presenters is that there are a lot of flaws in this particular bill.

Sweeping all those flaws aside—one person suggested it was unconstitutional, unnecessary and unconscionable—how does this in any way deal with the symptoms, let alone the root causes, of the problem?

We had Mr Henry Verschuren here yesterday speaking in support of the bill, from Greenwin Property Management, who said that when they evicted a tenant carrying on illegal acts, under the Landlord and Tenant Act, he resurfaced across the street at another apartment complex. People, we accept, have to live somewhere. If they're going to be dealing drugs, and they're evicted from one apartment, they'll either turn up in another apartment or turn up on the street.

I'm not quite sure, given that we have a lot of flexibility built into part IV of the Landlord and Tenant Act—many examples have been given of drug traffickers who've been evicted under the Landlord and Tenant Act—why we need this and what useful purpose it serves. Perhaps you can help me.

Mr Hilborn: I agree there's two problematic areas, the one being the fact that it would have to be done through the Divisional Court level, which would conceivably be a considerable length of time after the offence. Marry that up with the fact that a lot of the distributors, dealers—again reverting back to crack because it's our most prominent problem—most of the crack dealers, as I said, are very transient. It's not like they have to have a lot of money invested in their operation; quite the contrary.

In answer to your question, basically there are two areas where I can see there being a problem: the fact that it's something that can't be addressed right away. By the time it comes around to the divisional level, they may conceivably not even be living there anyway. They may have been forced to move out for other reasons or whatever.

Ms Harrington: I want to thank you for telling us the reality of what you face out there and how much you are doing to try to solve the problem. That's what this bill is

trying to do, but I believe it is terribly flawed. The one aspect I would ask you to comment on, and which I spoke in the House on, is the discriminatory nature of this bill in that a person who is a home owner does not face eviction on trafficking charges or criminal charges, yet a tenant does.

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Mr Jackson: He just said they do.

Ms Harrington: If this legislation were to pass.

The Chair: The question was to Mr Hilborn.

Ms Harrington: Would you care to comment on that aspect of the bill?

Mr Hilborn: Yes. The area that I think has to be looked at is the fact that in a high-rise complex the drug dealing is taking place in stairwells and in the front lobbies, and you're having drive-by shootings, you're having assaults, you're having weapon offences that are happening in the elevators. This is something that is being brought on to the tenants of that specific apartment building; we'll use an apartment building as an example. One apartment can be bringing the cancer to that premise, and it could be in the form of drug dealers, people selling the drugs, people who are distributing, the violence involved with it, drug ripoffs.

As I mentioned earlier, you are running into people trying to support their habit. Quite often they'll be using kids who are in a high-rise complex as stakeouts while they do their drug transactions. I think it's quite a bit different than a private residence in the sense that it really affects a great deal more people.

The Chair: We've run out of time. We thank you for taking the time to make your presentation to us today.

Mr Runciman: On a point of order, Mr Chairman: It's not related to this witness but the issue that was just raised by the member. I don't know if Mr McNaught has indicated that he's circulated information related to the question Ms Harrington asked about the forfeiture provisions, where in fact there is legislation where in effect you can have your house seized upon conviction.

The Chair: Okay, thank you very much.

WHYY MEE FAMILY COUNSELLING FOUNDATION
OF METROPOLITAN TORONTO

The Chair: We'll invite Whyy Mee Counselling Foundation of Metropolitan Toronto, youth-new Canadian court worker program, Ms Eugenia Pearson. Welcome.

Ms Eugenia Pearson: Thank you, ladies and gentlemen, for having me here today. Before I begin, I must apologize that in my submission I wrote about the government and I bypassed the fact that it's a private member's bill. I must also say that I just received the motion on the different sections, which I have not had enough time to peruse, but I think my presentation will address some of the concerns we have.

Whyy Mee was founded in 1982 from an academic, legal, medical, psychological, social and sociological perspective. The purpose of its foundation came from the realization that a large number of visible minority and new Canadians were suffering from frustration and stress stemming from the challenges of adjusting to a complete-

ly new society without the benefit of adequate support systems.

I think all of you have this report, and maybe it would be redundant if I just go over it, if it's permissible. But the problem we are having is not the fact that we do not recognize that there are problems in housing and that there are a number of issues around drugs on the street or in the home. In the job I do in the community, I have seen a number of situations where families have been terrorized, not only by the police but by members of the community. Some of these people are not guilty. Some of them do not know what their relatives are doing.

For that reason, I feel that Bill 20 needs a lot of consideration before we could think of it being a substitute for addressing the issue. We believe we need to have a proper community-based dialogue. When I say "community-based dialogue," I know about the aggressions that exist out there with people on drugs. But I feel that people who are working closely with these people and the families have a lot of input to give to the committees which have the ability to make changes. I feel our work should be mostly with government committees and with communities.

Many of the people who are victims of this type of drug abuse are vulnerable single mothers. Many of them are being terrorized by the drug users. Their children are being used, and even to the extent where many of them do know or suspect that there is an illegal act going on by a friend or a relative, they cannot do anything about it. These people need protection. They have to accept what is going on because their lives are at stake and their children's lives are at stake.

This is where we as community people or government officials ought to take these situations into consideration rather than having to displace families from their homes, when many of them have to go along with the problems surrounding them.

It goes back again to many of the families, elderly people, who do not have any idea of what is going on in their children's lives. I have to go back to the Young Offenders Act, where on the one hand children are given the authority to be their own people, because they are responsible for themselves, and on the other hand when there is a crime then the parents are being dragged into it and they have to take the responsibility. These are the sorts of things that we are concerned about. We have to make up our minds. We have to be precise as to who is responsible, and not the family as a whole.

I have many cases, but this case to me is one of the most outrageous cases: I had a mother with two children. She lived in a Metropolitan Toronto Housing complex. She knew nothing about what was going around her. She knew her community was infested with drugs but she had nothing to do with it. Based on the fact that she would not subject herself to be a mistress for a man, she was totally set up. Her apartment was in disrepair. Metro housing did not answer her request to have her home repaired until the policemen went in and terrorized the home and abused her that she had drugs. They never found anything in her house. What they found was a small amount of drugs under her step. That could be

placed there by the user or anyone in that area, because her place was in disrepair.

She was arrested and Metro housing ordered eviction, which is the North York law by itself to evict someone: automatic eviction. This woman was terrorized and her children were scared. They had to take psychological counselling because of the treatment they sustained in the house. It is because of community intervention, which I orchestrated myself—I brought the politician in the woman's area and we were able to prove that it was because of the disrepair in the housing that this woman had to go through all that pain—Metro housing went ahead and did repairs immediately, to prove its point in evicting this woman.

I'm happy to say that to date this woman is still living in the complex because they repaired the place and she was found not guilty of the offence. This is the point that I'm trying to bring to the committee, that people are being victimized, and there are tenants who are doubly victimized because of who they are, where they are coming from or the location in which they live. We take the position that Bill 20 would serve injustice to many people of this nature.

I also am fully aware that it's a critical need to address the issue, because we have children in school and families that cannot cope with this type of issue. Children are dropping out of school because of the need for extra money and they are forced to do the trade because it's quick money for many of them, particularly people who are totally economically deprived. When they are economically deprived, the children see an easy way out because they are influenced by these users.

We feel that something has to be done, not by having a law to evict families, but that the users, if found guilty, should be placed into some treatment centre, at which time we feel that the families should be given some sort of monitoring services from the social service perspective, so that they can deal with all the indignities that surround them with the drug abuse.

1450

As I said earlier, I don't intend to get into too much of the information, because it's in front of you. I would entertain questions if you so wish. But I will touch on the level of the disempowered tenants. When I looked at disempowered tenants, we're talking about those non-residents who are coming in and infringing upon the life of people in their communities. You heard earlier from the police officer that many of these transactions are not done solely in the area in which the person lives. These are the sorts of things that we should take seriously.

When we're looking at disempowered tenants we also look at the factors, because during the course of eviction we see that many of these people are people who may be victimized by their neighbours, victimized by their own landlord, based on maybe standing up for their own rights. We have to be careful that whosoever is going to be treated, the family must not be a victim of that type of treatment.

This concludes my presentation at this point. I will draw your attention to the recommendations we have put

forward. We recommend that Bill 20 be cancelled. The reason I said it should be cancelled is we need more time to think of something that is more conducive to our communities and to our own conscience, that some people will be victimized as well as some people will be guilty, and we have to be doubly sure that landlords will not abuse their power. We also do not want any sense of racial disharmony in our community. We need to deal with this problem without creating further disharmony and greater indignity to the individual.

We feel that community and government should work together to find suitable provisions if a person is to be treated for drug use. The drug user should be removed to a treatment centre and the family of the offender should remain in the building with assisted social services care where necessary.

If the offender is to rejoin the family unit after treatment, a timely and well-planned transition should be put in place to ensure that the offender is completely rehabilitated and the family is removed to a secure place for reunification where possible.

There should be a monitoring system for the family to avoid recidivism.

The government should encourage the services of community support, medicare, school programs, social services to assist in building a safe and secure community.

The government should consciously address the levels of deprivation and poverty among low-income families as a way of reducing these problems that often contribute to chronic drug-related incidents.

Finally, I would like to add to this that I hope the committee will take into consideration that although the law is the primary instrument of social justice, we should question to what extent the law is the proper instrument for such a policy where women are victims, children are abused and families with children and the elderly may suffer. We acknowledge that these are the views of one agency, but if our recommendations fail, we believe that tenants need to be well informed about the protection and rights they may have and the level of conformity which Bill 20 will bring.

I also will add the fact that we are deeply concerned that tenants will be moved from one area to the other. The problem will be shifted around, and if we don't have a proper solution, I don't think Bill 20 will do any justice at all regardless of its good intentions, because the user is going from place to place. You've heard it several times. We're only what we call shifting the buck from one place to the other.

This concludes my explanation.

Mr Jackson: I'd like clarification from Eugenia on what you mean by a legal offender, or am I reading that incorrectly? Is it someone who offends our legal system?

Ms Pearson: What page are you on?

Mr Jackson: The main objectives of your organization are "to provide support and counselling to legal offenders...." Do you mean people who have been charged and gone to court?

Ms Pearson: Yes. We deal with people who have

been charged, before they enter the court, and after we do after-care with them.

Mr Jackson: I appreciate your sentiments in the context that you provide those advocacy services. I appreciate that a lot of our dialogue at this point has been on those people who have been victimized. That is perhaps fairly or unfairly a major focus for this committee. All three political parties have expressed that. I appreciate receiving your brief. Perhaps my colleague would like to comment.

Mr Runciman: I recognize the concerns you've mentioned here as well about families being evicted. Certainly that's not the intent of this legislation and I don't think that is indeed the case. I think we've talked about the discretion allowed the courts. But there are situations, and one was just outlined to us by the officer from the Metropolitan Toronto Police, where there are members of the family who are also involved in the distribution and sale of illicit drugs. This gives them the opportunity not simply to touch base and remove the one offender but a number of offenders. At the same time, it simply doesn't have to remove an innocent family.

You are an advocate for people in conflict with the law, so we understand where you're coming from in that respect. I'm just wondering about tenants who have to live in these buildings. Your concern seems to be primarily for the people you advocate for. I guess the bigger question is, do you not consider the people who have to live in these buildings side by side? Their kids have to see these dirty needles, they have to see the transactions, they have to see the guns, they have to see the violence. Do you not consider these people victims and that government should be doing something for them?

Ms Pearson: I did address that. We talked about people who see the situation as intolerable. I addressed that in our report.

Mr Runciman: But your concern seemed to be primarily around the offender.

Ms Pearson: No, not exactly. I'm sorry if that's the perception. I'm concerned about people who have to live with the intolerable situation. I'm concerned about the young people who have to see the dirty needles, as you have mentioned. What I am actually saying is that we have to apprehend the doers and have them properly treated, put them into a treatment place, because where are we going to put them? If we're taking them away, where are we putting them? We have to put them someplace. I don't believe in displacing people, because we are sending the problem to others.

Mr Runciman: We're not talking about users here; we're talking about dealers.

Ms Pearson: We're also dealing with the dealers.

Mr Runciman: The dealers into a treatment centre too?

Ms Pearson: We need to have these people apprehended and treated.

Mr Gary Malkowski (York East): Thank you for your presentation. It was interesting to hear your perspective. I hear your concern about Bill 20. It seems that you feel it will cause other problems and that it will not be

helpful for the group that you're talking about, the innocent people who will be evicted from their apartments because of the actions of the drug dealers. Do you think there could be some kind of other solution to Bill 20 instead of Bill 20?

Ms Pearson: Yes. I think there should be a solution to this type of problem. We are not above reproach and I think we can deal with it rather than using a bill that could be applied unfairly. This is the unfair treatment I'm talking about. Whereas it will be very good for others who are very honest, I'm talking about people who are double-victimized. This can be seen as another way of abusing tenants who are helpless. I think we can deal with it. In my recommendation, I said we should sit and deal with it.

1500

Mr Malkowski: Do you think Bill 20 is more designed to help the drug dealers instead of the victims who are trying to look for safe places?

Ms Pearson: No. I wouldn't think it's beneficial to anyone at this point in time. People who are looking for a place to live—I want to live freely myself, and others want to live freely too. I'm not saying that Bill 20 is as detrimental as it may sound. I'm saying that we have to find a solution in dealing with the users, the dealers and the people who are living in the areas. But how are we going to determine who is using the drugs, and how are we going to determine who should be evicted? That's what we're talking about, tenants over tenants and landlords over tenants. That's what we're talking about, the fairness that it will bring, the injustices.

Mr Phillips: On your recommendations, the comments I get from people in my community are that when they are faced with a drug dealer in their neighbourhood, somehow or other it seems to go on for a long while, that oftentimes it seems difficult to get it resolved and that some people in the community feel they have to live with it for far longer than they should, while the drug dealer, for whatever reason, seems to be able to get by for a long while.

One recommendation you have here, that the family of the offender should remain in the building, is interesting. People in my community would say: "I'm tired of pampering the drug dealers. We have scarce resources and we seem to be pandering to the crooks and not looking after the rest of us." As I say, with the exception of that one recommendation, your recommendations could be interpreted as being almost overly sympathetic to the drug dealers. Am I misinterpreting these recommendations?

Ms Pearson: I think so, because I'm in no way endorsing the drug users or the drug pushers or whatever name we want to give them. I'm talking about making provisions and dealing with the problems. We cannot sit back and allow these people to come and terrorize our young people and turn them into zombies before they even finish school. If there is a problem and we know that this person is pushing drugs, then we have to find a way to get that person treated for his behaviour. So I'm not endorsing anything; I'm saying that we should make an effort to apprehend that individual and have that

person treated one way or the other.

Mr Phillips: If we did recommendations 1, 2, 4, 5, 6 and 7 of yours, many people would say: "I'm trying to get services for a variety of things, and all of these resources are being applied to dealing with a convicted drug dealer. I just don't think that's fair." That's the response I would get, that we don't have that much money to provide other services and yet we're going to do all of these other things: remove to the treatment centre, timely and well-planned transitions, remove to a secure place, provide a whole bunch of other programs. I just wonder if we aren't running the risk of putting all of our money behind the drug dealer when we should be trying to allocate it in a different way.

Ms Pearson: But where are you going to put them? It's going to cost us anywhere they go. Where are we going to put these people? They've been evicted from across the street and they're living at the other section. Isn't it expensive? Where are we going to put them? The services are there. We have services in existence. These are not new services we're asking the government to create; these are services that are in existence. Bill 20 is saying this person is convicted, this person is found guilty. Are we going to remove him? What we are saying is to use the services that are available to us to deal with this issue and not have the family be victims of one person's behaviour or two people's behaviour.

The Chair: Okay, we ran out of time. We appreciate your coming today and sharing your views with us. Thank you very much.

METROPOLITAN TORONTO POLICE SERVICES BOARD

The Chair: Mr Gardner, are you prepared to begin?

Mr Norman Gardner: Yes, I'm prepared to come and talk and run. We're in a budget session, as you know, at council.

The Chair: Of course.

You may be familiar with the proceedings here. You have half an hour, and leave as much time as you can in your presentation for questions.

Mr Gardner: I think we'll have lots of time. I'd like to extend my appreciation to both you, Mr Chairman, and the committee for hearing me today. I'd like to also commend Mr Runciman for his initiative in attempting to deal with a very serious problem that exists here in Ontario, and in particular in Metropolitan Toronto.

People who are engaged in criminal activities, particularly those of a nomadic type, hardly ever use their own properties. It's far more beneficial for them to rent property, having the option of paying or not paying the rent, utilizing that property and sometimes wrecking it and forcing legitimate landlords who rented the property in good faith to suffer the consequences of having an undesirable element in the rental property who is not the initial person who had formulated a lease or an agreement with the landlord. In other words, you get a situation where somebody may have leased the property and brought somebody else into that unit and they're using that unit for anti-social behaviour or activities.

My understanding is that the proposed bill applies to a person convicted of an offence under the Narcotic

Control Act committed in connection with the premises he or she occupies as a tenant.

This proposed bill would be more effective if it were to be extended to include all other criminal activities; that is, common gaming and bawdy houses and other criminal activities. By strengthening the proposed bill, it could also be used to forbid the common use of properties for criminal activities and purposes. It's my feeling that the wording of the bill should be "An Act to protect the Persons, Property and Rights of Tenants and Landlords and forbid the Common Use of Properties for Criminal Activities and Purposes." By making these changes, the intent of the proposed bill would not only encompass the protection of tenants and landlords, but would also address and curtail the elements which support and allow criminal activities to flourish and thrive.

In many cases, actions against tenants are being heard as landlord and tenant matters within the Ontario Court (General Division). Legal actions of a criminal nature and their decisions should supersede legal matters which are being heard as landlord and tenant matters. Cases could still be heard within the Ontario Court (General Division), with all avenues of appeal still remaining intact. But now the landlords would have the added benefit of having crown attorneys requesting to have tenancies terminated and writs of possession issued.

Under the Landlord and Tenant Act, if damages are caused, the only recourse for landlords is to seek restitution through civil procedures. When an award is made by the landlord and tenant courts to landlords, tenants are still able to evade payment by filing for bankruptcy. By allowing this bill to supersede the Landlord and Tenant Act, crown attorneys will be able to seek compensation and restitution for landlords and property owners for damages which have occurred as a result of the criminal activities taking place on their properties. By receiving a criminal conviction, protection by filing for bankruptcy then is not available.

We all get gut reactions. To some degree we've got a sense of what is natural justice and that natural justice is based somewhat on what we perceive as community standards and morals. My perception of community standards is that the vast majority of the public are really sick and tired of seeing victims of intimidation, harassment and physical abuse ignored and abandoned, and the perpetrators of this victimization getting away with their anti-social behaviour. We need to put some teeth into legislation to prevent tenants and landlords from violence and from financial harm. This problem that the proposed bill is meant to address certainly has a very broad impact.

1510

The people who live near some of the areas where a lot of these criminal activities take place, whether the premises are used as a crack house where people are taking drugs, IV or whatever, or as houses of prostitution, really are frightened and intimidated. You have to see some of these victims who are afraid to talk. If they're on MTHA properties, they have to get home by a certain hour because the lobbies are taken over by some of the people who frighten the hell out of them, excuse my language. They are extremely frightened and feel like

they're locked in a prison. They are looking for someone to rescue them.

Certainly the same thing holds true with some people who rent properties out and don't take particular care about what the people they make the lease arrangements with are going to be using that property for. They may say: "I'll rent it out. I really don't care what they're going to use it for as long as they pay the rent." In some cases they pay the rent but they wind up creating a big problem for the people who live in that particular adjoining area and who feel intimidated, who feel frightened and don't get the kind of protection they should.

We all recognize that there is an accountability factor we have to deliver to society as a whole, and I think this bill is going to add some stability to neighbourhoods. It would be a step towards that accountability and would have a positive effect on our communities and our societies as a whole.

That, ladies and gentlemen, is my speech.

Mr Winninger: There are a couple of problems that come to mind as you speak, which have been repeated again and again by many of the presenters at these hearings over the past couple of days. First, aren't you really avoiding the problem by evicting drug traffickers from one residence and they move on to another residence or move on to ply their trade in the streets? How is this bill aiding anything?

Mr Gardner: I'll tell you something. If you lived next to these people, you wouldn't care where they were going to go as long as you got rid of them as your neighbour.

Mr Winninger: But you represent a whole community of people. How does it assist things when they move across the street or down the block or into another neighbourhood in your area?

Mr Gardner: You're absolutely right. It doesn't help, unless these people get it into their heads that this kind of activity is not going to be tolerated, that perhaps in these cases there are going to be charges against them and maybe some convictions levelled.

The big problem too is that we don't have an adequate way of dealing with people who have addiction problems. If we take a look at the number of people being treated today for addiction problems compared to the number of people who have addiction problems, it's really infinitesimal. You're absolutely correct in saying we've got to have some way of dealing with these people. We're going to have to find some way of making adequate resources available to make it compulsory that people who are charged and convicted get a reasonable amount of drug treatment therapy.

Mr Winninger: So you're talking treatment and prevention.

Mr Gardner: That's right. We're only talking about one aspect of the legislation.

Mr Winninger: But that's not in the bill.

Mr Gardner: That's not in the bill, but I just feel—and I've seen some of these things happen. A few years ago the previous government deinstitutionalized a lot of people and—

Mr Callahan: We didn't do that. The Conservatives did that.

Mr Gardner: Well, somebody did.

Mr Jackson: They didn't correct it. Is that what you're saying?

Mr Gardner: It all sounded very good, but the only problem was that there was no adequate way of ensuring there would be some supervision of some of the people being let out of the institutions. We really needed a sort of big brother or family to undertake to look after these individuals, because when you get people with mental illness and they're not taking their medication properly, they cannot function in a normal manner.

What we've seen is a situation where some people are not accepted into the hostels in Metropolitan Toronto, and in Metro we've got about 55% or 60% of the hostel population of Ontario. We've got people you can't let in there because they don't take their medication and they have behavioural problems. There's so many things, just like the drug problems.

Mr Winninger: We're into a different area. I do have other questions, but I want to find out if any colleague had a hand up.

The Chair: No.

Mr Winninger: Okay. We already have a couple of vehicles in place that we heard about repeatedly yesterday. We have the Landlord and Tenant Act, which not only allow courts to evict the tenant based on the tenant's own illegal acts but also allows eviction orders when a tenant permits others to conduct illegal acts on the premises. We have criminal courts where judges can make compensatory orders to pay for the kind of property damage you described earlier.

I presume you've read the bill. I'm just trying to find out from you, as you speak with great support for the bill, what it offers society and people in neighbourhoods that they don't have already.

Mr Gardner: The easiest way for me to respond to that is that sometimes, just as you pointed out, you're dealing with things in isolation, and judges will deal with them in isolation. This bill, it seems to me, puts together a few of those things so when the judge is handling them, they have a little broader aspect of being able to deal with them than dealing with them on the individual basis of the existing legislation. I'm not a judge, but that's how I look at it.

Mr Callahan: I want to jump right into it, because I agree with you. There are people who are suffering from schizophrenia who are our street people of this country, because of the wacko Mental Health Act that lets them go in one door and out the other one, which I have to tell you was brought about during the days of the accord, when the Conservatives and the NDP—

Mr Jackson: That's a crock, and you know it.

Mr Callahan: —refused to support provisions that would have helped these people.

Mr Jackson: That's misleading.

Mr Callahan: That's not misleading at all. That's fact.

Mr Jackson: That is absolutely misleading.

Mr Callahan: All right, you prove me wrong.

Mr Jackson: I can prove you wrong, because I sat on all those committees.

The Chair: Mr Jackson, we'll give you an opportunity to say that again when you're speaking.

Mr Callahan: In any event, to give you an example—and I'm going to get political now—of how shortsighted this government is, the fact is that I've been pushing and my colleagues have been pushing for a drug that is apparently the best thing they've got for schizophrenics now to be put back on the formulary so the street people can use it and perhaps stay capable of looking after themselves and eliminate a lot of these problems on the street. Well, the Minister of Health didn't even know what the drug was when I went and talked to her about it.

The government should start looking at the old attitude, like the mechanic, "You can pay me now or you can pay me later," and that's precisely what they're not doing. What they're trying to do is patch things, patch-work.

To go to Mr Runciman's bill, I gave him a fair bit of due for bringing this issue before this committee so we could discuss it, because there's no question there's a very important issue out there. It's law and order, it's the safety of our community, it's dealing with having to live next to a drug dealer who's got guns and everything else. But we have some problems with the bill which we've heard from people who have come before us.

1520

The first one is a jurisdictional problem. I made a pitch yesterday that we should get out of this jurisdictional mode in this country or we're going to wind up suffocating ourselves. In any event, it has to go to the Ontario Court (General Division) because of a case called *Reference re Residential Tenancies Act*. We don't have jurisdiction to set up the provincial court to deal with this so it goes to the General Division court.

We heard from Detective Sergeant Craig Hilborn this morning that only about 20% of the drug cases ever get to the General Division, and that's because of cutbacks too in the moneys available for prosecutions for drug cases. You're dealing with 20%—granted, they would probably be the most serious because the crown would move them up to the General Division for that very reason—but 20% that is the window of opportunity we're looking at in terms of trying to help people and protect them from these—I can't think of a name for them, actually.

On the other side of the coin, we also have a court system that is totally underfunded. We have a court system that's so backlogged in Metropolitan Toronto that there are massive numbers of civil cases that can't be heard, and we're about to create a forum into which we're going to put one more possibility, one more statute.

You're a municipal councillor. I was one for 19 years. We used to pass bylaws, and I'd always say: "Why have we got another bylaw? We can't enforce the ones we've got." It's great politics, but in reality—the perception is

there that you're doing something, but you're just fooling the people. I don't believe in doing that. I believe that for politicians today, the watchword, the most important thing they can think of, is integrity, honesty. Don't fool the people any more. They've caught on to us.

You've made some comments here. Maybe we can salvage the bill and find some way of making it work, because the intent is good. I wouldn't want to live next door to a drug dealer, particularly crack cocaine. We heard from the same detective sergeant this morning that with crack cocaine, to guard your money and your crack cocaine and the rest of your goods, you've got to have an arsenal of weapons. I would imagine if we could take down the walls in this city, we'd probably find enough arms to carry on the Second World War: grenade launchers, machine guns, the whole bit. You'd know that from being on the police services board. I'm sure you've seen some of the busts they've made and the guns they've come up with.

It becomes somewhat ironic that we have all these jurisdictional niches, these little pigeonholes where you can't cross over to that one or that one, and only this court can hear this, or only that court can hear that. If we don't get out of that mentality, we're going to make New York City look like Disneyland in comparison to Toronto and the surrounding areas.

We've got to do something about it, so I applaud Mr Runciman for bringing the issue forward to allow us to debate it and try to get at the heart of it, but in looking at the bill and in listening to the depositions, there are an awful lot of these pigeonhole problems there. I don't know how you solve them. If somebody can tell me how to solve them, fine.

I suggested earlier that this should perhaps be an enlargement of the section of the Criminal Code that allows a judge to make a compensation order for damage to property or injury to persons and do it all at one time. But what that does—I'm told you can get on for trial in 60 days here, while in Brampton it might be six months to a year. That means that person's out there on the street living in the accommodation for a year while they're waiting for this act to kick in, because it only takes place on conviction.

Mr Jackson: I'm enjoying the speech. I just want to make sure Mr Gardner has time.

Mr Callahan: Mr Gardner didn't want to respond anyway.

The Chair: Time has run out, but I'd like to give Mr Gardner an opportunity. Is there any comment you want to make to that?

Mr Gardner: Absolutely. I think we're all looking—

Interjection: That was a stream of consciousness.

The Chair: When did you read James Joyce? Sorry, Mr Gardner, please continue.

Mr Gardner: You're right. We all feel a little frustrated in dealing with things that we see are wrong in our society. The frustration among the public is, why don't we do something about it? I think one of the big failures has been within the judicial system itself, that what's coming out of there isn't perceived to be justice,

as far as the victims are concerned.

I get a lot of calls from people: "Why don't police look into this case any further than they looked into it?" There are a lot of things the police are not going to look into any further because they're not going to lay charges because the crown has talked to them about it, and they don't feel that whatever evidence they've been able to gather is worth going any further with. So why should we waste, as you say, the valuable time in the court system? There are a lot of people who are victimized to some degree who are never going to get compensated.

I've been badgered by one person right now—he's not one of my constituents but he sure seems to have zeroed in on me—in trying to deal with someone who has been charged with welfare fraud. They took this senior citizen for somewhere in the neighbourhood of \$4,000 to \$5,000. He wants restitution but he's never going to get it, and I told him that. I could play the game of saying, "I'm going to pass this thing on," create a paper trail for him, but I told him it's not going to go any further because it's not worth, in many cases, the police resources to try to find enough evidence that would make a crown look at it as worthy of going to court, so it's abandoned. This is where the situation is. The people out there are frustrated. They're being hurt and they're looking for somebody to try to help them.

The way I see the bill—and I'm not a lawyer; I'm busy enough doing all the things I have to do at my level of government—it looked to me as if this bill wrapped a few things together that a judge at least could have at his disposal without dealing with things on an individual basis. If the legislators can find some way of helping this out and making it a little more practical, fine, and we'll look to you for your wisdom.

Mr Runciman: I'm heartened by Mr Callahan's comments that perhaps we can work together to achieve a resolution and address this. It's nice to hear that, but I'm not sure we're hearing that same kind of message from the government.

There are a couple of things I want to touch on briefly. In terms of the deinstitutionalization and the problems with the mental health area, no one suffers from that more than my constituency, having a forensic facility there and seeing people shoved out on the streets without proper resources in the community. In terms of the right to refuse treatment, that was an amendment brought in by Evelyn Gigantes during the accord period. Certainly I did not support it and spoke against it, and it's on the record. I simply want to say that there's a lot of responsibility spread around among all three parties in respect to what's happening in that regard.

Your comments about the MTHA were interesting when you were talking about lobbies taken over and people feeling like they're locked in prisons. In some of the depositions we've had from so-called tenant groups, people who purport to represent tenants—which left the police officer here shaking his head earlier—their primary concern seemed to be that eviction of a drug dealer represented cruel and unusual punishment. That's the approach we've heard from them.

The last individual this morning, from Parkdale

Community Legal Services, was talking about MTHA in his testimony, indicating that it's not having any problems, that the Landlord and Tenant Act is working fine, thank you very much. What you're telling us, of course, and what the police officer was telling us earlier, when you feel like you're locked in a prison, that lobbies are taken over and people have to be in by certain hours or go through a drug network when they're coming into their own building—what's really happening here? Is it what the fellow from Parkdale said, that it's working fine, there's no problem at MTHA, or is there a real problem, as you've suggested, that these buildings are being taken over?

Mr Gardner: In the last couple of weeks, we've seen some very good newspaper articles on security in the MTHA buildings. In fact, the recently hired head of security quit after two months. There seemed to be some conflict. This was given a great deal of media attention, by at least a couple of our major newspapers in Toronto. You'd have to conclude from that that if somebody told you there's no problem, they're trying to bury something under a rug.

There is a serious problem. The MTHA areas are the areas where more drugs are flaunted around and sold than perhaps anywhere else in Metropolitan Toronto. Either they're—I hate to say it, but there's a tremendous amount of intimidation going on in those properties among those tenants, and there certainly would be a credibility gap, as far as I was concerned.

1530

I was involved in a situation at one time where there was some anti-drug activity taking place in an MTHA property, and I was invited in to help these people. What unfortunately happens is that some of the people involved in the drug activity infiltrate these organizations and wind up threatening, intimidating and even carrying out physical attacks on these people to stop their anti-drug activity. Anybody who's telling you it's not happening is really not telling you the truth or not telling you everything they should be telling you. It is not a happy situation.

Mr Runciman: This witness also suggested that tenant meetings where you could encourage these people to stop their illegal activities would be the answer.

One of the things these groups were talking about, though, was more police protection. I'm wondering how you feel about how the current government has dealt with encouraging your ability to extend community policing in Metro.

Mr Gardner: When I left, they were dealing with the police budget. Last year, the police budget was \$560 million. Because of the 7.5% cut, which translates to \$42 million, the social contract, which translates to \$18 million-plus, the Metropolitan Toronto Police Force has been dictated to by the CAO's office at Metro to take a \$60-million cut. Well, that is one big cut to take, and it's certainly going to affect the delivery of police services.

Our command staff have been very, very innovative in trying to deal with this problem. We've tried to put a situation into play where officers are told to go to court

while they're on duty. The idea was to avoid overtime pay for going to court, but the problem now is that when the officer gets involved in a situation he's got to respond to, he's tied down with it so he can't get to court, can't give evidence against somebody he should be giving evidence against and in fact by not going to court is really obstructing justice. They're getting a bit of a condemnation because they're not showing up in court, but they're out on the street. If they're not out on the street and they're going to court, then obviously we don't have enough officers to respond to the kinds of problems we're getting. They're in a terrible catch-22 position today.

In terms of foot patrols, in the last three or four years we've put a lot of foot patrols out on the streets in terms of trying to implement community policing to a far greater degree. Last year, because of the stringent cuts undertaken by the senior command, they found they were going to have a surplus, so they came up with what we call Project 35, which was target policing. Target policing meant taking off-duty officers, putting them on for four hours at time and a half in those areas where we really needed to beef up, like the Parkdale area, for instance, which was rampant with a lot of drug use, a lot of prostitution etc.

Mr Runciman: Not according to our witness from Parkdale, I'll tell you.

Mr Gardner: Anyway, they beefed that up. Now when we're implementing our budget cuts of \$60 million for 1994, the target policing people are off. We still have the foot patrols, but now the neighbourhoods feel that we've taken away the foot patrols. It's turned into a real terrible situation because we are going to have to cut the delivery of police services. That's basically it.

Police are society's "bouncers," and when you take that away, you're taking away a level of protection that the public needs. To keep up the deterrent factor of uniforms as we've had this attrition factor of over 300 officers in the last, say, year and a half or so with no hirings, we've taken people out of the detective divisions who are the investigators. These are the people who investigate and prepare the cases to go to court. So we are losing our investigators and we are losing the flexibility of being able to deal quickly and effectively with the criminal element. It's going to be much more difficult.

The Chair: Mr Gardner, we appreciate your taking the time from a Metro council meeting to come here today and share your views with us.

VANCE LATCHFORD

ANNE SMITH

FREDERICK HOOD

SANDRA GARDINER

Mr Vance Latchford: It's been quite an educational and thought-provoking opportunity to sit here today. I and my friends sitting with me first became intimately acquainted with Bill 20 at or about 8 o'clock yesterday morning, so if our presentation is in any way disjointed, that's the reason. Those of you who know me will know that normally I have reams of background and everything else. I don't have terribly much of that today.

There are a couple of components of the presentation. The first component is to lay out the legal parameters, then to establish the duty of care on the part of the crown, and third, but I think vastly more important, to reiterate the position from the tenants themselves directly about their experience of the problems and some thoughts from them about what appropriate remedies might be.

As a brief preamble to my own comments, the government knows I'm a publicly appointed member of the Metropolitan Toronto Housing Authority board of directors. I wish to make it clear to you that my comments are my own. They do not in any way necessarily reflect the views, the wishes or the desires of the Metropolitan Toronto Housing Authority board or indeed the Metropolitan Toronto Housing Authority itself.

As a public servant in that capacity, I have a duty to ensure that I find out what the problems are and take part in any initiative possible to attempt to effect a solution to those problems. Part of the exercising of my duty is to seek and take direction from the tenantry component of the Metropolitan Toronto Housing Authority. As well, I must also consider the views and the opinions of staff. So it's not a terribly easy job, but it's a job that needs to be done.

I'll move on quickly to the legal position. The legal position is that the problem of drugs, in Metropolitan Toronto in any event, is not only a legal problem in terms of drug dealing; it also represents a significant health problem. Many of the persons using illicit drugs contract the AIDS virus by virtue of being forced to use and reuse needles and share things around. The AIDS virus, as has been made known to your government four years ago by your own officer of health in the House, is a virus that needed to be upgraded to a virulent virus under section 35 of the Health Protection and Promotion Act, RSO 1980. I would argue that this is necessary because as the AIDS virus attacks the immune system, the AIDS virus precludes medical people from conducting tests for secondary illnesses such as tuberculosis, mononucleosis and other related group 4 airborne viruses which could potentially create a significant health problem, particularly where we've got concentrations of low-income persons such as to be found in social housing.

On to the duty-of-care point. The crown has a duty to act. The ministers of the crown are considered to be servants of the crown. The classification of the minister of the crown being a servant of the crown is to be found within the definitions of the Proceedings Against the Crown Act. The duty as it relates to tort liability or civil wrong liability is to be found in the Canadian Encyclopedic Digest (Ontario), 1993, I believe it is. Those materials are available to you in legal libraries.

I'd also draw your attention to the rule of the "reasonable person." The rule of the reasonable person is brought forth in a text by Fleming, *The Law of Tort*. The rule of the reasonable person simply states that people must exercise a duty of care when they are carrying out their business, they must look for the unforeseeable plaintiff, they must look for and be responsive to the needs of the people they are placed in charge of looking after. I would argue that the crown, the Queen in right of Ontario, has

a significant obligation to look after the needs of Ontarians.

Moving on to another legal issue, it's the legal issue of the contract of the landlord and the tenant. The contract between the landlord and a tenant does not in any way contemplate the commission of an unlawful act or an anti-social act. Those acts are completely outside of and apart from the contract. Clearly, it is a breach of the contract between the tenant and the landlord. It's a civil matter. Bill 20 presents some problems, because if Bill 20 were to be used for the evicting of drug dealers or other persons involved in anti-social behaviour, it would simply slow the eviction process down.

I would refer members to a bill that I spoke to briefly a couple of minutes ago, the Health Protection and Promotion Act. Subsection 13(4) speaks to the authority of the medical officer of health to go into the shooting galleries, the drug dens, where it can be found that people are gathering for the purposes of shooting drugs, sharing needles and so on and so forth; where it can be suspected that there are potentially airborne viruses of the class described earlier, that the medical officer of health be instructed by your government to act so we can ensure that the health-related problems are dealt with forthwith.

Ms Anne Smith: I'd like to thank the committee for the opportunity to come here and speak on behalf of tenants. I'm quite disturbed at people coming here, in some of the deputations I've read and listened to, who speak of themselves as tenant advocates. I'm a little confused about what a tenant advocate is now.

In my opinion, a tenant advocate should be someone who's advocating for tenants who are living in absolutely horrendous conditions. I will say there was a time when maybe I thought somewhat like those people. In 1991 I was part of the eviction committee that landed the eviction policy from the Metropolitan Toronto Housing Authority board, and at that point intervention was of great interest to me. I really felt that people were indeed victims, but as I took the role of the chair for a brief period, I learned very quickly that that was not the case.

I am sure some of you are aware that the Metropolitan Toronto Housing Authority chairman's office has a hotline on which many calls come from the community and the victims of these drug dealers. I was told on many occasions that I had no right as a tenant to speak to the issue that people should be given fair treatment when dealers invade communities as they do. One part of the eviction policy I'd like to talk about is to ensure that tenants are free from those aspects of human behaviour which render life intolerable. When I look at that and at later on, when I became much softer in my comments in saying we had to help these people, indeed that's just what I had been doing: supporting those very people who are making the lives of tenants like myself and others intolerable.

But I also heard people speak today about the mentally ill. We as a landlord have to house the mentally ill and AIDS victims and many others. I hear on an almost daily basis from mentally ill people, and they tell me how victimized they are by these drug dealers, how many of them are beaten, many of them used to perpetrate the

actions of the drug dealer. On the issue of the health proponent, the AIDS victim, when I've talked to people with AIDS in the community, they speak of the issue of the IV drug users contaminating them, who have no immune system, with diseases they already cannot fight off because they have the AIDS virus. There's a whole health aspect here too that really disturbs me a great deal.

Also, I've heard some advocates here in terms of the racial aspects, people feeling that minorities were being victimized. In fact, I had many calls on the hotline from minorities who felt they left their country, a total war zone, to come to another war zone when they moved into MTHA buildings; that they had to hide because of their lack of English and because these people also used them as victims and pawns, and in many of their dealings people got caught up.

I also have to speak about the legal clinics, some of the deputations I've heard today where the legal clinics suddenly are coming forward saying that the Metropolitan Toronto Housing Authority is successful in evicting people. I'm confused, because the legal clinics are the very people who tell me in my work on a daily basis that we are just not doing enough to evict the drug dealer. I would certainly use this information at a later date, to have these clinics come forward and tell me that they still think we're doing a good job, because that's certainly not the impression I had as a board member or as an advocate of tenants.

I've brought two tenants with me. I can actually claim that I have never been a victim—wouldn't want to be a victim—even though I have lived in MTHA housing, and I tell you that there are some really good people in MTHA housing who don't deserve to live in these conditions. Rather than hear from the supposed advocates, I think we should hear from the victims and the tenants themselves and come to some kind of agreement, as Mr Hood said this morning, an all-party agreement. The people who live in this situation are the people we should listen to, no one else, these very tenants I have here today. Thank you for your time.

Ms Sandra Gardiner: I am the president of a residents' association in my community. I find it astounding that no other sites except the one I live in has these problems, because my children are kept virtual prisoners. From the time they come home from school I don't allow them to go out, because I don't want them subjected to what's outside our door: handguns; watching drug dealers deal their wares; watching 10-year-old, 11-year-old boys being used and earning \$5 or \$10 a day to run the drugs for the dealers, to alert them when the police are coming; the harassment, the intimidation, being threatened that your windows will be shot out or your dog will be killed if anybody opens their mouth.

I can speak about the eviction policy. I'd like to know where that law is. The police task force went to the house beside me and removed weapons, handguns, drugs. Two of the people in the house were charged with forceable confinement. A female was assaulted, another female was sexually assaulted. They still live there. That happened two years ago. I went to my property manager and asked, "Why are they still living here?" "Well, the mother didn't

have knowledge. Because she wasn't home at the time and didn't have knowledge, it was a loophole they got around." This is a family that has been problematic for the last 10 years they have lived there, but they're allowed to live there.

I don't believe my children should be raised like that. Four years I've lived in Metro housing, but this summer I'm going, because I live with a guilt trip every day I subject my children to this. I feel I've done them the greatest injustice by moving into social housing. When I hear these stories of people saying, "We have to keep it going," well, I'm going back out to the private sector, to what people in Metro housing call a normal life. That's where I came from and that's where I'm going back to.

I feel I'll have a lot more freedom for my children. They'll be able to go to school, they'll be able to walk, they'll be able to have a normal life. I'm talking about a 9-year-old and a 15-year-old. When my daughter's out after 10 o'clock at night, whenever she's on her way home and she is by herself, she's to call me and I meet her at the bus stop. To me, that's not normal. That's all I have to say.

1550

Mr Frederick Hood: I have a lot to say. Unfortunately, I probably won't have the time. I'd like to thank Mr Runciman for this report. The biggest thing we've heard around this table is that everybody's talking about it, criticizing what we can do and everything. Well, I'm a victim. My wife died in my arms because of a drug addict breaking into my home. My daughter was set afire after four days of being raped by four drug addicts in her own home, and I had to stand there and watch her burn. I couldn't catch her.

I want to talk about a lot of problems. I also am from Metro Drug Action, where I run a hotline for young children. It's word of mouth. I've never been supported by any government. I've done that now for 14 years. I have run across children nine years of age, 10 years of age, eight years of age—I even know of a case of a baby who had the dope put in her diaper while the girl sold it.

I could go on for ever, but the most important thing—I lived in a place that had seven crack houses in the immediate vicinity of five feet, surrounded. I lived a nightmare. I had my windows boarded up. The people next door to me had to move out because they were going to bomb my house. I heard a lot of people talking about how we get rid of them. When Norm Gardner was here and talked about the victim he knew about, well, that was me. My brother talked about my problem too. I've lived that nightmare.

I used to put them in jail faster than you could—we saw helicopters coming over Alexander Park that lit up the entire project. You'd think it was daylight. We used to have big paddy wagons. They would pull them in, take them into 14 Division. While they were processing, they'd have a lawyer there, and they were right back out on the street selling. MTHA never evicted any of them. In fact, the crack houses are still there.

I'm going to tell you something. It is a very sorrowful thing to have to live around. One of my children lost an

eye because the crack dealers used to throw their beer bottles and their syringes in front of my house. I couldn't let my children go out. At that particular time, they were four years old, six years old, eight years old, and a 15-year-old boy.

Do you know what it's like to see your grandchildren go out in front of your house and you can't leave them out there? They threaten to kidnap them, steal them. They took my daughter, as I said, and raped her for four days. She set herself afire. They had to go to the nut house. I've had custody of the children ever since. You don't know how frustrated I feel.

As I said, I run a drug line for young children; it's word of mouth. I get about 15 calls a week, sometimes more. I have another telephone beside that thing. I have two telephones, because I have to phone the police a lot of times. When you get a little nine-year-old or 10-year-old saying they want to kill themselves—and you know where you find these children? I'm going to tell you where. MTHA.

These kids are runaways from all over Ontario. They end up in Toronto housing because they blend in, because everybody there is too scared to say anything. If you think these children run away and have safe hideaways—no way. MTHA is the only place you can go. You can hide anybody you want in there, and that's a shame. There are a lot of good tenants in Ontario housing, a lot, but they are victimized, terrorized.

I heard this lady talking about tenants' associations. Do you know something? They infiltrate tenants' associations. They take control of the project. You don't dare say a word. Do you know how many times I've had steel grates going through my window? Steel grates missing me that much, and my children one day going up the stairs, right through a bay window. I've had phone calls. They told me if I didn't back off, my daughter was going to get it. She got it. She got raped four days in her own home, with her own children there.

And I hear this gentleman here say: "Well, what can we do? We evict them and—" Look, I'm going to tell you something. Have any of you people watched your daughter burn? Have any of you people held your wife while she died in your hands? None of you. Let's not say, "We can't do this." I've heard more here about drug addicts getting protection than I've ever heard in my life. I don't hear anything about the victims.

This gentleman here brought a bill forward. At least I give him points for courage. He brought a God-damned bill forward.

The Chair: Mr Hood, we want to keep time for one question at least. There's about a minute and a half per caucus to ask you questions.

Mr Frederick Hood: I'll stop at that and you can ask me all kinds of other ones if you like.

Mr Runciman: I don't have a question, really. I just want to make a brief comment. I want to thank the witnesses for being here. They said they just heard about this at 8 am this morning.

Mr Frederick Hood: That's right.

Mr Runciman: I'm glad you heard about it, I really

am, not simply because you're here essentially in support of what we're trying to do, but we've heard so much testimony, which the government members have been relying upon, which really has no credibility. I suspected it and questioned it at the outset. But you are people who have lived that life. You know what's going on.

Mr Latchford: All four of us. I didn't indicate that I'm a tenant as well.

Mr Runciman: Anne, I gather from your comments that you were briefly the chair of MTHA. You should have remained the chair, because you're a woman of courage, appearing here when we have these other people who say they're supposedly representing tenants. Someone from Parkdale says it's not a problem, but we hear it's a major problem. Someone from the Bathurst quay said there's no problem in 51 Division. It's an epidemic. They testified before us here, and they had no credibility whatsoever. They misled a standing committee of the Legislature, as far as I'm concerned, and I simply want to congratulate you for having the courage to be here today and bring forward the truth.

Mr Callahan: I'd like this to be outside my time. I want to ask research to look into an issue which will help me with this bill. I notice that subsection 1(2) ends with the words "an application to the sentencing court to terminate the tenancy." As we've heard, that puts us up in Ontario Court (General Division) because of the residential properties case; I don't have the exact name of that case here. Could you look into that and tell us if we could use the provincial court if we use terminology not to terminate the tenancy but to order that the person convicted not be permitted to return to the residence? In other words, it's a prohibition. It's done in bail orders all the time. I wonder if that wouldn't get us around the constitutional argument.

The Chair: Let me just ask the question. Do you think you can do that for tomorrow?

Mr Andrew McNaught: Yes.

Mr Callahan: I join with Mr Runciman. I find it incredible that we were told, first, that there was very little drug activity that went on, and, second, that there weren't many guns around, yet we heard from a police constable here from the drug enforcement office that that's totally wrong. And I know from personal experience. I spent 30 years practising criminal law, and I know what goes on with these matters.

Mr Frederick Hood: I've witnessed it myself, a machine gun sitting in a crack house. I can tell you about a lot of other things.

The Chair: Mr Hood, hold on, please. He's got about a minute left to make some comments or ask some questions.

Mr Callahan: You've told us about these things today, what's going on at Metro housing. Has this been told to the people who—I hope I'm not talking to the people who are in power at Metro housing, but has this been told to them?

Mr Frederick Hood: Oh, yes. It was told to them on several occasions.

Mr Callahan: Have they reported this to the present

government, that this is what's going on in these facilities?

Mr Frederick Hood: I have no idea whether they have or not, but I can tell you this much: They play politics with—

Mr Callahan: I haven't got much time. I'm going to ask this gentleman, who—

The Chair: Two of them are board members, actually.

Mr Callahan: Can you tell us whether a report has been rendered?

Mr Latchford: I'll defer to Anne Smith if she wishes to answer instead. There are reports that go to the board. The systems for gathering statistical information, it's been pointed out, are flawed, because the stats are totally dependent upon calls that go to the internal security force of the Metropolitan Toronto Housing Authority and do not include statistics from the Metropolitan Toronto Police Force. We need to make an effort to get the statistics from the police force so that the full extent of the problem can be documented.

Mr Callahan: That's not my question. My question is that there have been complaints to the board, and obviously we've heard them today, made by people who live in Metro housing. I want to know if the board has passed on those complaints to the provincial government.

Ms Smith: In my tenure as chair, I had a difficult time getting support for the resident aspect and the victim aspect. I will say to you that I hired the security director, whose tenure was very short, as you all know. I suggest that in that time he also had an aggressive attitude, much as I have, that things needed to be cleaned up, and as you can see, he's no longer there. Much as I am a board member for a varied number of reasons, I'm there to see that these kinds of things are brought forward to the provincial government, but I'm one person only, unfortunately. As you know, my term was very quick and down and dirty, simply because I asked too many questions.

Mr Callahan: Once you open your mouth, you're gone.

Mr Winner: I have a couple of quick questions for Ms Smith. When were you acting chair of the MTHA?

Ms Smith: From April 1993 until December 1993.

Mr Winner: During that time, did you have an opportunity to deal with the eviction policy and procedures guidelines of the Metro Toronto Housing Authority? I asked for them and they have been circulated around the committee. Are you familiar with those procedures?

Ms Smith: I helped design that policy.

Mr Winner: So you're familiar with those procedures. It refers to illegal acts and actually gives examples of illegal acts: Illegal involvement with con-

trolled substances and narcotics and all related activity, including the use and/or possession of weapons, is viewed as an illegal act which will place a tenant in jeopardy. It goes on to describe more specifically the various duties of employees and the property manager and also urges that tenants report these incidents. Then attached at the end is a notice of termination that actually specifies not only trafficking in a narcotic, namely cocaine, but possession of a narcotic, namely cocaine. That's in the notice of termination.

We've heard some conflicting evidence. Actually, the information we're getting is that the MTHA pursues evictions vigorously, and that when it does it's had 100% success. Then we heard the representative earlier today from Parkdale legal services—maybe you were here for that—saying it's been his experience that the MTHA pursues these things most strongly. When I was chair of the London and Middlesex Housing Authority until the last election, we too were pursuing these kinds of evictions based on illegal substances.

Some may say it's never enough and that there's more of this kind of crime to be rooted out and dealt with, but I have to ask you, is the MTHA right now dealing seriously with allegations of trafficking or possession of drugs, and are you familiar with cases where the MTHA has successfully evicted on that ground?

Ms Smith: I wouldn't say there's a non-success rate. I think they do pursue it to the best of their ability. But I have to take my information from tenants. I take that very seriously. I believe the people living in that are going to tell me whether there is a success rate or not, and that's not what I hear. That's not what I heard on the hotline and that's not what I hear every day from tenants. Maybe staff are of the belief it's happening, but I hear a lot more on the other side to say we're not successful.

That's not to say it's not being pursued and that's not to say that efforts aren't made on the part of staff, but I think there's stronger legislation needed. Yes, there are flaws in this bill, but it is important that tenants be given some teeth, and this will give it to them, and the housing authority needs some teeth. We, as the Metropolitan Toronto Housing Authority landlord, have the biggest influx of this kind of behaviour. There's no comparison. You can talk about the private sector all you want, but the reality is they're there. We are the safe house. We can pursue all we want, but if we were to weigh the number of evictions as opposed to how many are still there, the pile would be terribly uneven.

The Chair: We have run out of time. We appreciate your coming today. It was very helpful. Thank you very much.

We'll proceed with clause-by-clause tomorrow. If you have amendments, give them to the clerk today or as early as you can tomorrow morning, by 8 or 8:30, 9 max.

The committee adjourned at 1604.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Callahan, Robert V. (Brampton South/-Sud L) for Mr Murphy
Cooper, Mike (Kitchener-Wilmot ND) for Ms Akande
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
Murdoch, Sharon (Sudbury ND) for Mr Mills
Perruzza, Anthony (Downsview ND) for Mr Malkowski
Phillips, Gerry (Scarborough-Agincourt L) for Mr Chiarelli
Runciman, Robert W. (Leeds-Grenville PC) for Mr Tilson

Clerk / Greffière: Bryce, Donna

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Wednesday 9 March 1994

Journal des débats (Hansard)

Mercredi 9 mars 1994

Standing committee on administration of justice

Comité permanent de l'administration de la justice

Tenants and Landlords Protection Act, 1993

Loi de 1993 sur la protection des locataires et des locateurs

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Wednesday 9 March 1994

Mercredi 9 mars 1994

The committee met at 1018 in the St Clair/Thames Rooms, Macdonald Block, Toronto.

TENANTS AND LANDLORDS PROTECTION ACT, 1993

LOI DE 1993 SUR LA PROTECTION
DES LOCATAIRES ET DES LOCATEURS

Bill 20, An Act to protect the Persons, Property and Rights of Tenants and Landlords / Projet de loi 20, Loi visant à protéger la personne, les biens et les droits des locataires et des locateurs.

The Chair (Mr Rosario Marchese): Before we enter into clause-by-clause considerations, I understand Mr Runciman has some comment he'd like to make.

Mr Robert W. Runciman (Leeds-Grenville): It's really in reference to a point of order that Mr Winninger raised, I think it was yesterday, when I made an offhand comment in respect to his view of drug dealers plying their trade. I suggested that he had said if that's what they want to do, they have every right to do it, and he objected to that.

Perhaps I have misinterpreted what he said but I do have Hansard in front of me. He was talking, expressing concern about these merchants of death: "Why would you somehow put these people in double jeopardy? Once they've served their sentence, once they're ready to re-enter society, why should they not have a residence to go back to? And this is aside from all the other concerns about their moving on to other residences and plying their trade elsewhere, if that's their inclination."

I don't know; after re-reading that, I have difficulty in expressing an apology because certainly my interpretation continues to be that Mr Winninger was terribly supportive of these people. So I regret that he is concerned about my comments, but at the same time my interpretation remains the same.

Mr Robert V. Callahan (Brampton South): Before we start, Mr Chair, I wonder if, when we go through the clause-by-clause, we could skip over subsection 1(1), because if we defeat 1(1) it makes no sense to go on with the balance of it.

If you people are prepared to be openminded and are not going to deal with this, although I see large numbers here this morning, in a political way and try to just kill it, you may want to hear the amendments of myself and Mr Runciman before you deal with 1(1), because if you deal with 1(1) and you defeat it, I would suggest, and I think legislative counsel might confirm what I'm saying, that would end the bill.

What I'm going to be asking is for unanimous consent, and I think you'd get that without giving away anything,

that we would move to 1(2) first and then through the bill and then come back to 1(1) if in fact the amendments are accepted or if we have some consensus on what should be done by the bill.

The reason I say—

The Chair: Does counsel have an opinion on this?

Mr Callahan: I don't think it takes a legal opinion. I think if you just look at it you'll see that—

Mr Cameron Jackson (Burlington South): Rosario's asked for one, Mr Callahan. Let's cooperate.

Mr Callahan: All right. That's fine.

The Chair: All right, Mr Jackson. You're getting support here.

Ms Margaret MacKinnon: I don't believe we'll be voting on the individual subsections, in which case I think it would be all right to have the debate on the individual subsections because the vote will take place at the end with respect to the section.

Mr Callahan: Oh, all right. We're going to stack. That's fine. I just don't want to start off by having it thrown out of the ballpark immediately, but recognizing that there's a large bench over there today for some reason.

The Chair: Thanks, Mr Callahan. All right, we're ready for clause-by-clause on section 1. There's a PC amendment there, Mr Runciman?

Mr Runciman: I move that subsection 1(1) of the bill be amended by inserting after "convicted" in the second line, "in the Ontario Court (General Division)."

Mr Callahan: I understand the reason for Mr Runciman doing that, of course, because we were advised that constitutionally that is a result of a case of something about the residential review commission—I can't recall the exact citation—that in fact a provincial court was not vested with the powers that apparently were solely vested in the superior courts prior to Confederation and therefore the sole jurisdiction of section 96 judges.

I have an amendment that will follow that hopefully will allow us to use not only the General Division court but also the provincial court, where we heard in the testimony from the witnesses that 80% of the cases are tried, and for the reasons I stated then it wouldn't make sense to just clutter up the General Division with more applications. They've got more work than they can handle. That's the only comment I would make with reference to it. Hopefully my amendment to 1(2) and a couple of other sections will overcome this problem.

The Chair: Any other discussion on this matter?

We're ready for the vote then? All in favour of—

Mr Callahan: No, no. Just a second. If that's the case—

The Chair: On the amendment.

Mr Jackson: Mr Callahan, it's an amendment.

The Chair: All in favour of the amendment? Not the section 1, but the amendment?

Mr Callahan: Mr Jackson, just be patient, okay? You don't run this committee. We all are here to serve the public.

Mr Jackson: I thought you were a Chair of one of the committees.

Mr Callahan: I was a Chair of a committee.

Mr Jackson: I stand corrected. I thought you've been a Chair.

The Chair: Come on. Go ahead, Mr Callahan.

Mr Callahan: I'm asking you, Mr Chair, to defer the vote on that motion because if in fact the amendment that I'm going to move is not accepted, then at least we can save Mr Runciman's motion. I don't want to vote against it now and then have mine voted down.

The Chair: I would just ask people, is there unanimous support for this amendment to be deferred?

Interjections.

The Chair: No? What's the big deal?

Mr Jackson: On a point of clarification, Mr Chair: The dilemma we find ourselves in is that Mr Callahan's amendment to section 1 is affected by and will influence his vote on the amendment from my colleague Mr Runciman. In no way does that diminish your right to move amendments. He had notified the Chair that he might vote differently on this depending upon the outcome. So he was serving notice that he was addressing the same issue for amendment in section 1.

The Chair's options are to clarify and proceed with Mr Runciman's motion and then further amend it by Mr Callahan's motion, or ask Mr Runciman to step down his amendment to allow Mr Callahan to present his first. That is the position you're in, Mr Chair. I thought we were simply proceeding on Mr Runciman's amendment and then Mr Callahan would be moving an amendment to the amended motion.

The Chair: We have two options. If we don't have unanimous consent to do that, we have a problem in terms of dealing with the question Mr Callahan raises, or for Mr Runciman to defer that matter, I suppose, or to withdraw it and bring it back at another time.

Mr Runciman: Mr Chairman, if it's procedurally correct for me to withdraw my motion and then reintroduce it, stand it down—

The Chair: Stand it down.

Mr Runciman: Yes, stand it down. I will do that.

The Chair: Very well.

Mr Jackson: I wish to serve notice that I have a further amendment to section 1, but it doesn't deal with the issue that Mr Callahan—

The Chair: Very well. The matter is stood down then.

We'll move on to the second amendment, PC motion.

Interjections.

Mr Jackson: Mr Callahan gave you notice. You're in section 2, right?

Mr Callahan: Yes, I'm in section 2 as well. I'd ask that that be stood down, if Mr Runciman has no—because the one I'm amending is subsection 1(2). It's not subsection 1(1), it's subsection 1(2).

The Chair: We stood down subsection 1(1), so we're moving on to the next subsection, which is (2).

Mr Jackson: I just gave you notice that I have an amendment. You didn't stand down all of section 1; you stood down his amendment. "Any other amendments?" should be your call, or "Any other further amendments to section 1?" You stood down his amendment; you didn't stand down the section.

The Chair: His amendment to that subsection (1).

Mr Jackson: Yes. You stood down an amendment to the section.

The Chair: To that section, subsection (1).

Mr Jackson: You didn't stand down the whole section.

The Chair: That's right, so we were moving on to subsection (2).

Mr Jackson: No. I notified you that I have a further amendment to section 1.

The Chair: Are you moving that now, Mr Jackson, or do you want to stand that down as well?

Mr Jackson: No, I said I'd like to move a different amendment to section 1.

Interjection.

Mr Jackson: As soon as he recognizes me, then I'll give you my motion.

The Chair: Go right ahead.

Mr Jackson: I move that subsection 1(1) of the bill be amended by inserting after "(Canada)" in the third line "and schedule G and H of the Food and Drugs Act (Canada)."

I may need help with this, Mr Chairman. Now that is moved—I don't need a seconder.

The Chair: Explain.

Mr Jackson: As you recall, we had Detective Sergeant Craig Hilborn present to us and he appealed to this committee to include those chemically manufactured drugs, artificial drugs, as opposed to those that are pure and covered under the narcotics act, such as heroin and crack cocaine etc. He was asking this committee to expand and include the manufacturing of chemical-based drugs, which is my understanding.

I don't really know if I understood that correctly, but if there's some assistance in clarifying, I wrote down, unless Hansard can reconfirm, he said schedule G and H of the Food and Drugs Act. I suspect, since that's a federal act, it would have "Canada" in brackets. That's my explanation. I think he had a very good point and I think we could strengthen our bill by including LSD and whatever these other drugs are.

Mr Callahan: I'm not sure we have to do that. I appreciate what my friend is amending, but I think sections 4 and 5 of the Narcotic Control Act refer to trafficking and importing or exporting. I look to legislative counsel to advise as to whether or not, if we don't include the Food and Drugs Act, we would be precluded, if this section remains as it is, from a prosecution of the drugs that are referred to as narcotics as opposed to, as Mr Jackson is saying, under the Food and Drugs Act you're dealing with chemicals such as LSD and—I'm trying to think of a couple of the others—angel dust, PLP, I think it's called.

I may have already answered my own question. I think that's right. I think we would have to include those sections. Am I right?

Ms Margaret MacKinnon: I don't have a copy of the Narcotic Control Act here, so I can't really answer that question. I'm not familiar with prosecutions under that act.

Mr Callahan: I think it is, now that I give it some thought. I think in fact you'd have to include what Mr Jackson has suggested. I'm going to support the motion. If it makes sense that we're trying to eliminate trafficking and exporting or importers from that milieu, then I think it's equally necessary that we do it with reference to the chemical drugs because they're probably the most prevalent on the street and they could be made in anybody's bathtub, or whatever. I'm going to support the motion.

The Chair: Further debate? Do you require the reading of the amendment that was made by Mr Jackson? Did people hear that? Yes? Okay, we're ready for the vote then. All in favour of the amendment?

Mr Callahan: Do you want a recorded vote on this, Cam?

Mr Jackson: If you're not supporting it, yes, I'd like a recorded vote.

1030

The Chair: All in favour, on a recorded vote?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That amendment is defeated.

Mr Jackson: I have a further amendment. Just so people know where it comes from, the presentation from the Parkdale legal clinic, Ray Kuszelewski, recommended that we use in subsection 1(1) the direct reference to the Landlord and Tenant Act. So in connection with premises, I would move that subsection 1(1) of the bill be amended by removing "in connection with" and inserting therein, in the fourth line, "in or about the residence that he or she may occupy as a tenant."

I believe that is the language from the Landlord and Tenant Act, and I would appreciate perhaps if legal counsel can—

Mr David Winninger (London South): Mr Chair, on a point of order: Just for clarification, what I heard Mr Jackson say is that Mr Kuszelewski of Parkdale Community Legal Services had recommended something.

Mr Jackson: Yes, he did.

Mr Winninger: What page are you referring to of his presentation?

Mr Jackson: During his presentation he said, to paraphrase his words, "Although my concern about the bill remains, I want to bring to your attention your reference to 'in connection with.'" He said that lawyers will have a field day. "What does 'in connection with' mean?" He was absolutely right. He said at least you should be using the exact same wording from the Landlord and Tenant Act, "in or about the premises" or "in or about the residence." I thanked him for that. I said, "You may have inadvertently strengthened our bill," and I thanked him for that. Is your memory coming back?

Mr Winninger: I didn't want there to be an erroneous impression that he supported the bill because he was quite clear that he didn't.

Mr Jackson: No, I didn't say that. I said he suggested an amendment, which I think was a fair characterization of his efforts to help us with this bill.

The Chair: Ms MacKinnon, can you comment on that?

Ms Margaret MacKinnon: The wording in the Landlord and Tenant Act is "in or upon the residential premises or any part thereof."

Mr Jackson: Could my amendment reflect that wording, please?

The Chair: Go ahead.

Mr Jackson: Subject to the reference brought to our attention by legal counsel, I would withdraw my amendment and, with the committee's indulgence, delete the words "in connection with premises that he or she occupies as a tenant"—legal counsel is helping me by nodding—and replace them with—

Ms Margaret MacKinnon: "In or upon the residential premises or any part thereof."

Mr Jackson: "Occupied by the tenant."

The Chair: Debate? Mr Callahan, you're on the list.

Mr Callahan: I would support that. I don't know whether Mr Jackson wants a recorded vote. I'd ask for a recorded vote.

The Chair: Okay. Any other debate? Ready for the vote? On a recorded vote, all in favour of the amendment?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: Any further amendments on subsection 1(1)?

Moving on to subsection 1(2), Mr Runciman.

Mr Runciman: I just want to make a couple of comments here and see if there's support for this within the committee. Perhaps I'm misinterpreting what seems to be occurring, but it would appear that the government members have their orders for the day in respect to this legislation, and it doesn't matter what we do in terms of trying to accommodate some of the concerns that have been expressed in the two days of deliberations, because everything that's put forward is going to be defeated.

If that is indeed the case, I say let's be up front about it and not waste several hours going through amendments and debating the merits or lack of same when a decision has already been taken. I would rather see each caucus or each member of the committee have five minutes to express their views on the legislation and then move on to a final vote on the bill, rather than go through some sort of farcical exercise which is not going to do anything but waste all of our time. I'm looking for some kind of consensus around the table.

The Chair: We could decide to do that. There are a few people talking here, so we will wait for them to finish that and then we'll put the question to them.

Mr Jackson: Can I have one moment, Mr Chairman?

The Chair: What Mr Runciman—well, rather than paraphrasing him, he might want to repeat what he said.

Mr Runciman: I was essentially saying it looks like the decision has been taken and I'm not sure that it's in anyone's best interests to continue rather than simply moving ahead and having a vote on the legislation and giving each member who wishes an opportunity to speak for up to, say, five minutes to express their concerns and views and then move on. I know perhaps Mr Callahan would like to get his one particular amendment on the record and I have no objection to that if that's indeed his wish.

Mr Callahan: I recognize what Mr Runciman is saying, and perhaps I have blurted that out. But I am a person who is an optimist and I am hoping that the government will be moved by the rationality of the amendments and will in fact vote for them.

But I have a couple of concerns. I have concerns about the constitutional question, the applicability of the court rather than just the General Division; we need both courts. I have some amendments that might assist us in that regard. It's an additional arrow in the quiver of the people such as the good sergeant of the drug force who came before us and said, "We have no way of dealing with this issue."

The Chair: Mr Callahan, sorry. The question is, should we go through the amendments or should we allow each member to have five minutes to comment on whatever and then we vote on the whole lot?

Mr Callahan: Well, I'm speaking in favour of going through all the amendments. That's what I'm doing right now, Mr Chair.

I think it's of significant importance that we had people here who were in the know. We had people who protect our society. We had Detective Sergeant Craig Hilborn of the Metropolitan Toronto Police central drug

squad. He told us the difficulties they have. He showed us the problems. He was suggesting that what's provided for under the Landlord and Tenant Act may be a nice legal mechanism for a landlord who is trying to get rid of a tenant who doesn't pay his or her rent or whatever, but it's absolutely useless in the question of drugs—and you're not going to cut me off, Mr Chair, because I can speak—

The Chair: Mr Callahan, yes, but what we're trying to do is to determine a process here. We can go through the amendments where you can make these comments that you're making. It appears to me that what you want to do is to go through the amendments—

Mr Callahan: That's right.

The Chair: —so we'll do that, and you'll have an opportunity to speak to them.

Mr Callahan: I'm anticipating that the government may say to Mr Jackson: "Yes, that's a good idea. Let's just deal with it and defeat the bill right now." I want to see us go through these amendments. We're charged with the responsibility here, as members of this Legislature, to address the problems that have been brought to us by the deputants. If in fact the government is not prepared to do that, then it should have logical reasons for it.

As I've explained, I have problems with the constitutionality, I have problems with overloading the General Division court, with sending a remedy up to the General Division court, where only 20% of the cases ever get to. I think that weakens the bill, and we, the opposition, are going to attempt to put some strength into this bill so that it will be an additional tool for those people such as Detective Sergeant Craig Hilborn and those residents of MTHA to be protected.

If the government members really want to listen, they're going to go through these amendments. You can defeat them all if you like, but at least we're going to give you logical reasons why this bill can be sustained and why this bill should be passed, and then you can take the political heat if you defeat it. If in fact you've got your marching orders from Evelyn Gigantes not to support this bill, then you people can take the political heat for it.

Mr Jackson: I believe there is a sense that we should proceed, Mr Chairman. I only had one question: Did the government come today prepared with any amendments? We've seen Mr Callahan's, we've seen—

Mr Winninger: No, we have no amendments.
1040

Mr Jackson: The record will show that there are no amendments from the government. I think we can proceed in an expeditious manner, Mr Chairman. We're prepared to do that.

The Chair: Mr Runciman, subsection 1(2).

Mr Runciman: I move that subsection 1(2) of the bill be amended by striking out "sentencing" in the fourth line.

The Chair: Any comment?

Mr Runciman: Yes, I have some, but I have to find my notes in respect to this matter. This amendment is

simply removing the word "sentencing" from the fourth line because it's not necessary to specify which court is hearing the sentence, since by virtue of subsection (1) it must be heard in the Ontario Court (General Division). Simply, that word is not necessary.

Mr Callahan: I'd ask Mr Runciman if he would stand that amendment down until we've dealt with the amendment that I have to subsection 1(2). I think 1(2) in fact will allow us to simply use the general word "sentencing court," because I'm hopeful that if 1(2) passes, it will solve the constitutional problem that exists in terms of the inability of the Provincial Division court to hear the—

Mr Jackson: On a point of order, Mr Chairman: I appreciate what Mr Callahan is doing and he's trying to be helpful, but it is now the third time he's given me an explanation of his motion, which is not tabled yet.

Mr Callahan: Well, they are tabled. They were all tabled.

Mr Jackson: They are before us, but they have not been moved.

The Chair: They're before us, that's right. They haven't been moved.

Mr Jackson: And therefore tabled. I simply want to suggest, Mr Callahan, that without second-guessing the outcome, perhaps in the interest of time we might just deal with the vote before us and then receive your amendment quickly. Perhaps the secret is to get your amendment to the forefront quickly. Can I just suggest that we proceed with this vote and get it dealt with, and then we can get to yours quickly and I won't have to hear it for a fourth time?

Mr Callahan: The difficulty with that, Mr Jackson, is that, as you've pointed out before, my vote on that may be different than it would be if the amendment that I'm putting forward is defeated, because obviously, in order to at least get something, I have to vote for it. That's the only reason I'm asking for it to be held down.

Mr Jackson: We weren't bargaining—

The Chair: Let me just check. Mr Callahan has made his point clear. Does the committee want to stand this matter down?

Mr Runciman: I'll stand it down.

Mr Callahan: With the possibility of having Mr Jackson indicate that I've debated this section endlessly, I think it's pretty clear that the case that was referred to us of—I should put it on the record specifically—Reference re Residential Tenancies Act, which is referred to in the material that was handed out to us by legislative counsel, a decision of the Supreme Court of Canada, May 28, 1981, reported in 123 Dominion Law Reports, 3rd edition, starting at page 554—

The Chair: Mr Callahan, can we ask you to read that amendment for the record?

Mr Callahan: I move that subsection 1(2) of the bill be amended by striking out "to terminate the tenancy" at the end, and substituting "to make an order restraining the person convicted from returning to the premises referred to in subsection (1) until his or her sentence has been served."

I go back now to the rationale. There was difficulty. It was recognized early by Mr Runciman that because of the case Reference re Residential Tenancies Act, a provincial court was excluded from dealing with eviction as a sentencing matter.

However, if you read the case, the case seems to have a historic background to it, and I think it has been criticized in fact by a couple of other cases. The background to it is that pre-Confederation, pre-1867, the judges of the common-law jurisdiction, who were the superior court judges, who actually arose not out of statute but simply arose as a result of history, had the exclusive right to deal with matters of landlords and tenants because in the feudal society that existed at that time that was basically what was going on.

The argument was made and it was successful in the Supreme Court of Canada that in fact in the cases of landlord and tenant problems the province could not by statute create the provincial court, civil or criminal divisions, and vest them with the authority to be able to deal with the word "eviction."

That's the reason that in this case what I'm moving is that instead of eviction, we talk about a restraining order. The reason I say that is that in the history of this province thus far, provincial court judges of the family court division, who are also provincially appointed judges, have the power to issue restraining orders under the Family Law Reform Act. No one has ever challenged that as being unconstitutional.

That being the case, I would suggest that by using the words "restraining order," we have in fact taken the case out of the statements made by the Supreme Court of Canada in Reference re Residential Tenancies Act and we have now given to the province legitimate power to have the question that Mr Runciman is attempting to provide here made available to the provincial court as well as the General Division.

For the reasons that I stated and the questions that were asked of the drug enforcement officer who was here, something like 80% of the cases under sections 4 and 5 of the Narcotic Control Act, and I would imagine even the amendments that Mr Jackson has put forward under the Food and Drugs Act, are in fact tried for the reasons he stated in provincial court as opposed to the General Division. Even if you passed it, you'd have a very limited remedy and it would be only in the most serious cases where the crown elected to go by way of indictment and the case went up to the General Division court.

It's for that reason that I'm moving this amendment, and I would hope that it could be supported. I say this again—maybe I'm being naïve and probably am being, but I think that when we started out in this committee I heard the words, "Let's deal with this on a non-partisan basis"—I believe my colleagues in the Legislature are honourable people until they prove to be to the contrary.

I have to say that you may very well by your actions today—if you're not listening to the logic of how we can make this bill better and make it work, then in fact you've been given your marching orders and what you told us at the outset is not going to be true. This is going

to be a partisan issue and that's unfortunate.

The only people who suffer as a result of that are the good people who came before us, the people who live in MTHA, the people who are the drug enforcement officers of this province who came to us and said: "Look, we've got a problem. Drugs are a very serious problem. Law and order's a very serious problem. Guns with crack cocaine, a very serious problem."

What in fact you will be doing, if you are playing politics in this issue—and I hope you're not; I hope you will listen even at this late stage. Even though perhaps Minister Gigantes has given you your marching orders, you might get on the phone and tell her that this is a very significant law and order issue. This is an issue which has been asked for by the people who have to defend the people in this city and in other cities.

Perhaps we can deal with a bill now that will give us the overall benefit of being able to give them an extra arrow; it doesn't in any way take away from the Landlord and Tenant Act provisions that they have. But I suggest to you that the Landlord and Tenant Act, if you're going to simply rely on that, the Landlord and Tenant Act provisions, although they're useful and although the law seems to say all you've got to show is that they're interfering with your reasonable comfort and the landlord can get the tenant evicted, they're not being used sufficiently.

Number one, they're not fast enough, they're not effective enough to get a drug dealer out and keep him away from those premises for a number of reasons, for the benefit of the other tenants but more important, I would suggest to you, for the benefit of the kids who live in that house. Some of these people are families, not just taking up rented accommodations to produce drugs—they're families. You're going to let that person go back and live with the family and show kids at an early age how to make crack cocaine or how to sell it? If that's what you're suggesting, if you're suggesting they should bring a landlord and tenant application, I suggest to you you're smoking something.

1050

Landlord and Tenant Act legislation is probably fine for economic eviction, ie, the landlord says, "You're damaging my apartment or you've got too many dogs or cats in there or you're smelling up the place or you're keeping the music too high during the night and you're offending the other tenants." We're not talking about that. We're talking about a problem that probably didn't exist when the remedy under the Landlord and Tenant Act was provided for: drugs, massive amounts of drugs, particularly in metropolitan communities, and people being gunned down or being assaulted. Those aren't my words. The drug officer told us.

Are we going to let those people down by not giving the law enforcement authorities, the tenants of buildings where this is going on, where their kids are being raped and held at ransom and all the rest of it—are you as a government really going to be able to go out and say to the people after you vote against this, if you do: "We're in favour of law and order. We're really in favour of looking after the serious drug problem in this province"?

I suggest to you that if you people vote, as seems to be the case up to this point, you in fact are going to be part of the problem rather than the solution. You can say, "Today we may have pulled off a great political act by making Mr Runciman put his tail between his legs," but in fact what you will have done, you will have told the drug dealers of this province: "We've got the Landlord and Tenant Act. That's good enough for enforcement and eviction of these people from the premises." Yet it will fly right in the face of the people you brought before this committee: the Metro drug squad, the people from MTHA.

You will in fact have just ignored what they were saying, and that's one of the problems of this entire process, our system in the parliamentary system, the fact that we waste taxpayers' money bringing deputants before us. They go out of their way. They spend their valuable time to come before us and tell us why they need this legislation. From the looks of things, right from day one, you people knew or you had your marching orders, and I hope that's not the case. If it is, I hope I can persuade you to change your mind, get on the phone to Gigantes and tell her, "We can't do this."

If you've done that, what you've done is you've thrown away taxpayers' money while you've got other people who are involved in the Rae days at the correctional institutions where they can't get people to fill in and there's a real danger there. You've in fact thrown away money. You've paid us as politicians to sit here to do nothing. You've wasted the time of the people who've come before this committee. You have in fact ignored the person who is a professional, a police officer, who has to face the guns and face the crack cocaine in this province every day—

Mr Jackson: On a point of order, Mr Chairman.

Mr Callahan: —and you're prepared to do that. So I suggest to you you'd better change your—

The Chair: Mr Jackson.

Mr Norm Jamison (Norfolk): I suggest you take a Valium.

Mr Callahan: Is that on the record, "I suggest you take a Valium"? That's a great attitude.

The Chair: It's a point of order I'm trying to listen to, please.

Mr Jackson: Mr Chair, in accordance with the standing orders, you have exercised a great deal of patience and latitude by allowing Mr Callahan to speak beyond the point of his motion.

Interjection.

Mr Jackson: No, no. I think that in the interests of time, we would like to proceed. I would like to call the Chair's attention to the fact that I thought Mr Callahan was straying beyond the scope of his motion and imputing motive, and I think at this point we would like to proceed to finish the bill. At the conclusion of the bill is an appropriate time, when the bill is finally before us, to then impute any degree of motive.

The Chair: Thank you, Mr Jackson.

Mr Callahan: Mr Chair, I appreciate my friend's

comments but I would like you to show me the rule—unless they've changed since when I chaired committees, there is no rule. I can speak for ever, if I want, unless you invoke closure. I'm not going to, though.

The Chair: I was listening to you very attentively and I thought perhaps you might want to draw your comments to a conclusion now.

Mr Callahan: Okay. The conclusion is that if you people over there have been given your marching orders by the Minister of Housing—

Mr Jackson: On a point of order, Mr Chairman. Hansard will not record "you people over there."

Mr Callahan: I'm sorry.

Mr Jackson: That is a slight to all members. I'd ask Mr Callahan to understand the decorum that's required of us. "You people over there" needs some explanation.

Mr Callahan: Thank you very much. I will rectify that. You people over there, the New Democratic Party government, the government that was elected to help the little guy and the people of this province, you will in fact have fallen down totally in your responsibility to the people of this province by not dealing with one of the most important issues; that's law and order in this province, the drug dealings that are going on, the guns that are there, the safety of tenants.

What you're going to say to them is, "We think the bill that was passed back"—when was the amendment to the Landlord and Tenant Act, this section passed? Probably back in the 1980s. I'm sure it was back in the days when good old Toronto was Toronto the Good and you didn't have the drug problems you have today.

You better take a good look at it. I just want to comment. I find it absolutely objectionable when a member from the NDP government sitting in a committee of this House and being paid to sit here makes a comment as I'm trying to make legitimate arguments and concerns about what I've just said, tells me to take a Valium. That to me shows the cavalier attitude that the New Democratic Party members on this committee have about this bill and about law and order, about justice. They don't care. They've got their own agenda.

Mr Jackson: You did raise mental health issues and—

Interjections.

Mr Jackson: I thought that remark was in order.

Interjection: That's what we just heard.

The Chair: A little order, please. It's just getting out of hand a bit, if you don't mind.

Mr Winninger: I appreciate Mr Jackson's remarks about saving our substantive remarks until the bill is fully before us. I just wanted to comment that that's one of the most opportunistic speeches I've ever heard Mr Callahan give. To suggest that this government is not approaching this in a non-partisan manner—

Mr Callahan: On a point of order, Mr Chair: I take exception to that. You're imputing motives to me. You don't really know.

Mr Jackson: Jeez, what the hell were you doing to them?

Mr Callahan: This may be a great political game for the rest of you, but I think the people of the province of Ontario deserve a lot more than comments like that and comments by others saying, "Save your remarks until after the bill's been defeated." What good does that do?

Mr Winninger: I said at the beginning that it was the position of this government that we acknowledge and we recognize that there is a problem with drugs and drug trafficking, but this is not the bill that can deal with that. That's why I state that Mr Callahan's remarks were totally unwarranted. In fact the overwhelming evidence that we heard over the last three days was strongly opposed to the bill itself. Even the one studied response—

Mr Jackson: On a point of order, Mr Chair: You have a motion on the floor. You've been given a lot of latitude in this committee.

Interjection.

Mr Jackson: There's a motion on the floor. That does guide you, does it not, Mr Chair?

The Chair: It does. Thank you, Mr Jackson. We have allowed flexibility as to the number of speakers, as we often do, and we often object to things that we don't like when other members do something differently. But if you just focus on the amendments, it would be easier. Yes, at the end, when we can debate the whole section, people can make more general comments. Just to be helpful, can you focus on the amendment, please?

Mr Winninger: I was focusing on the remarks that Mr Callahan made in support of his motion on the amendment.

The Chair: I understand.

Mr Winninger: I can't see why it should be out of order for me to respond, however briefly, to what Mr Callahan said before we conduct a vote. How is that out of order?

The Chair: What I'm saying is, yes, many of Mr Callahan's comments were very general in nature as well, so you're responding to those comments. I don't mind that, as briefly as we can, and then focus on the amendment.

Mr Winninger: I was just going to state then, ever so briefly, that one of the only studied responses to Mr Runciman's bill that actually spoke to the bill itself, as opposed to the drug problem that we have out there, was Henry Verschuren of Greenwin Property Management. What he wanted to do was rewrite Mr Runciman's bill so it would reflect the Landlord and Tenant Act. That's why I suggested Mr Runciman's bill was unnecessary.

1100

Similarly, in this motion Mr Callahan wants to add an amendment that would do what provincial court judges and federal court judges already have the right to do, that is, when sentencing, to make an order restraining people from association, restraining them from going to certain premises. Just a couple of days ago, I read an order on sentencing that restrained a child molester from even going near a playground for the next 10 years, from associating with children under the age of 16 for the next 10 years. They have wide-ranging, far-reaching powers.

For Mr Callahan to come along and refer to a case that was brought to his attention and say, "This is why we need an amendment to subsection 1(2)," is totally unnecessary, unwarranted and, I repeat, opportunistic.

Mr Runciman: I will save my comments until the end of the debate when we're dealing with the bill as a whole.

With respect to what Mr Winninger just said about Greenwin Property Management, I think he's distorting what the witness said. Certainly he made a number of recommendations in terms of amendments which would in his view improve the bill. Mr Winninger mentions that in defence of his position, but then says that the bill is not necessary.

Someone simply reading this may draw from that that this was the view of Greenwin Property Management as well, and of course it was not. They indicated that they felt the legislation was extremely important and should proceed, perhaps with a number of amendments and changes. I guess I'd be looking to the government. If indeed they share the view of Greenwin on one hand, does that mean they're prepared to support the legislation as amended and suggested by Greenwin Property Management? I think not.

In terms of the particular amendment we have before us, I appreciate Mr Callahan's observations and I also appreciate his concerns about the legislation, but I too have great difficulty with the idea of restraining orders as an option to what we're suggesting in this legislation. For a number of reasons, I don't think that restraining orders are terribly successful. We have all sorts of instances of that to indicate that's indeed the case.

His comments seem to be based on a legal opinion from a witness who was hostile towards the intent and purpose of the bill. As I said, I simply don't think restraining orders protect, especially women and children. I simply have to remind him of the testimony of Mr Hood yesterday, talking about people who are rapists etc living in the same apartment building, and restraining orders simply don't work.

When I brought forward this legislation, I felt we could amend it and send it back to the House for third reading. The government would have to deal with it then. If there were concerns about the constitutionality or concerns about other areas, at least the government perhaps then could be compelled to deal with this, perhaps bring in its own amendments to address those shortcomings if it felt it was necessary and deal in a meaningful way with this problem. Apparently that isn't going to occur.

Again, I simply want to say I understand what Mr Callahan's doing, what he's trying to address, but I don't think this is the answer. I think we simply have to continue to move towards speedy eviction of these people if we want in any way, shape or form to help innocent tenants.

Mr Callahan: I just want to respond to your comment, Mr Runciman, about the ineffectual nature of restraining orders. If in fact there is a restraining order, there's an amendment that I am also going to be moving that would make it an offence, subject to a fine of up to

\$10,000 or two years' imprisonment or both, if you were to breach the restraining order. What I suggest it does do is give the tenant living next door who sees the person back around the premises the right to call the police, and the police, armed with that order, can come and arrest the person.

What you've got on an eviction is the possibility, as we heard, of all the family being thrown out. We've heard also that it can be selectively done so that only the offender is thrown out. Let's say only the offender is thrown out and he comes back into the apartment. How do you get him out? They can hide him in the closet, they can tuck him away somewhere and it really becomes very difficult for the police to very effectively and quickly deal with it. I suggest a restraining order at least gives them the opportunity of being turned in by a neighbour or even being turned in by the wife if she doesn't want the drug trafficker back in her house with her kids.

The Chair: I think we're ready for the vote on this matter. Do you want a recorded vote?

Mr Callahan: Yes, please.

The Chair: Okay, on a recorded vote.

Mr Callahan: Just a second. I'm not going to ask for the 20 minutes that I'm entitled to, but I'm going to ask to go around the corner here.

The Chair: Okay? On a recorded vote, all in favour of the Liberal amendment?

Ayes

Callahan, Curling, Phillips (Scarborough-Agincourt).

The Chair: Opposed?

Nays

Cooper, Duignan, Jackson, Jamison, Malkowski, Murdock (Sudbury), Runciman, Winninger.

The Chair: Okay. That is defeated. Mr Runciman, we'll go back to your amendment. We've stood that down. We could come back. Let's proceed and then we'll come back to the others that we stood down, all right? Subsection 1(3), PC motion.

Mr Runciman: I move that subsection 1(3) of the bill be struck out and the following substituted:

"(3) The application shall be heard immediately following conviction and sentencing."

The Chair: Do you want to speak to that?

Mr Runciman: I'm providing this amendment change to make it clear that the application to terminate the tenancy must be heard as soon after the sentencing as possible, although it's not intended to be part of the sentence.

Mr Callahan: I would like to support this, except that now we're still talking about the matter of eviction—and I understand the reason Mr Runciman wants to deal with eviction. The difficulty we have is that, as we heard, only 20% of the cases are up in the General Division and you're stuck with the General Division court. I can't support the bill at this point because what I'm doing is simply overloading the General Division court, which is already overloaded, and only dealing with 20% of the

cases. I just don't see there's any benefit at this point.

It's with regret, because I think that, as my comments earlier indicated on behalf of myself and my colleagues in our party, we are totally committed to the question of preserving law and order and dealing with the very serious drug problem we have in this province. I can't support the bill now that it's limited itself to just 20% of the cases. I don't think it would be the effective tool that was being asked for by the drug enforcement officers.

Mr Runciman: A couple of points: That 20%, as the police officer said—and Mr Callahan was speaking supportively of the police officer's testimony earlier today—tend to be the most serious felons, if you will, who are appearing before that court. I would think that 20%, even if it is only 20%—and we're dealing with the most serious offenders—by and of itself should be enough to encourage Mr Callahan and his Liberal colleagues to support the amendment.

I was also advised, and perhaps counsel may want to comment on this—I'm not sure if this is accurate or not. Even though a decision was made in another court, in terms of the other 80% that we're talking about, the crown could simply walk over to the General Division court and have an order issued.

It's certainly not that easy to do that sort of thing, but I've had lawyers indicate to me that is not a major problem, they could still deal with it that way. Simply, you get your conviction in the provincial court, the crown walks it over to General Division and gets an order with respect to an eviction.

Mr Winninger: I stated earlier my own views. I know Mr Callahan and I disagree on the proportion of the drug charges that are dealt with in a higher court, but he seemed to be coming a little more my way. Now he's up to 80%. Be that as it may, I think it was the evidence of the officer from the drug unit that the majority of offences were dealt with in provincial court. Clearly this amendment will not capture those people.

1110

I've also stated a more fundamental concern about the bill, and that is that you've got a criminal proceeding with a federally constituted court dealing with civil matters involving eviction of individuals and/or their families from units basically under the same language that's used in the Landlord and Tenant Act. I have fundamental difficulties with that concept and I also have, and share, the very practical concerns that Mr Callahan described around the work of the General Division.

We all know that there was a major problem with demands on the courts, and the criminal courts in particular. We have far more charter challenges than we did in past years. These charter cases take a long period of time. As the population grows, so does the incidence of crime.

We have courts that are faced with a deluge of cases, and just when we were through hiring additional judges, additional crown attorneys, additional support staff able to better manage the courts' case load, along comes Mr Runciman to add to their burden with hearings of matters that should rightfully be heard under the Landlord and Tenant Act, under summary proceedings with a burden of

proof that rests on a balance of probabilities and all of the other carefully contrived provisions of the Landlord and Tenant Act. That in a nutshell is why I'll be opposing this amendment.

Mr Gerry Phillips (Scarborough-Agincourt): Briefly, I have difficulty in accepting that we wouldn't pass a piece of legislation that may be good legislation because the system can't handle it. So I separate the two myself. I appreciate how busy the courts are and what not, but if the issue is that this would be helpful to people trying to deal with drug issues, then I think we have the responsibility for finding the way that the courts are able to deal with it. I appreciate what my colleague was saying and I have a slightly different interpretation on it. I would be focusing on dealing with both those issues.

Mr Callahan: I have to say that after hearing Mr Winninger talk about leaving this—and the net result is, if this bill doesn't pass, it'll be left under the Landlord and Tenant Act provisions. They're still going to be in the General Division court. You're not increasing anything in the General Division court, and for that reason, having heard the persuasive argument from Mr Winninger, I'm going to support the amendment.

Mr Alvin Curling (Scarborough North): I hope I'm not misinterpreting what Mr Winninger said. I, as one who is extremely concerned about backlogs in courts and the justice system, not for a moment would think that for those who are doing illegal acts that we don't put them through the system to be charged for any illegal act and say, "We have enough in the courts already, so let's not deal with that."

I think Mr Runciman is making the statement that these are acts that should be dealt with and proceeded with. I think the matter of backlog in courts is another matter altogether. I hope I misinterpreted him. I want to go on record that I would not support that kind of a strategy, to say, "Let's not deal with it because there are enough cases through the courts already," and find a more efficient way of dealing—

Mr Winninger: On a point of order, Mr Chair: I only said that there was another place that it can be dealt with by the court, not that it shouldn't be dealt with at all. Okay? I said under the Landlord and Tenant Act proceedings, civil proceedings. So don't misquote me on that.

Mr Curling: I just said I hope I didn't misunderstand you.

The Chair: I think we're ready for the vote.

All in favour of Mr Runciman's motion, on a recorded vote?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That is defeated.

Subsection (4): Liberal motion.

Mr Callahan: I move that subsection 1(4) of the bill be amended by striking out "terminating the tenancy" at the end and substituting "restraining the person convicted from returning to the premises referred to in subsection (1) until his or her sentence has been served."

I'm not going to spend a lot of time on this. I think it's self-explanatory.

Mr Jackson: Is this in order, Mr Chairman?

The Chair: Okay. Mr Callahan, proceed, please.

Mr Callahan: I think since the Conservatives and the New Democratic Party voted against my amendment to subsection 1(2) of the bill, which would have tried to enlarge the courts to which application can be made on a constitutional argument and also to have provided what I would consider to be a non-attackable constitutional power by the court, namely, the restraining of a person convicted from returning to the premises, it doesn't seem as though much can be said about this, except I would like to go back to Mr Jackson's argument and perhaps the reasons that he and his colleague voted against the amendment.

Mr Jackson: On a point of order, Mr Chairman: I asked you if this was in order.

The Chair: Yes, it was in order.

Mr Callahan: It is in order.

Mr Jackson: We can go restraining order ad nauseam after it has been defeated? Is that what we're able to do?

The Chair: The opinion that we have here, yes. Would you like an explanation?

Mr Jackson: I know we still have not voted and closed off sections, but the section that deals with whether to terminate, I'm getting into a legal debate here, but at the end of the day, it's not a closed section.

The Chair: Let's allow Ms MacKinnon to comment on that and then we'll have a better view.

Ms Margaret MacKinnon: I think there's a distinction to be made. The motion to amend subsection 1(2) related to a prosecutor's application. This one relates to an application which can be brought directly by the landlord. I don't think the sections necessarily stand or fall together. That's in my view why it's not out of order.

Mr Jackson: So the landlord gets to use this bill at a time of a conviction.

Ms Margaret MacKinnon: In subsection (4) the application would be brought after the conviction.

The Chair: All right, Mr Jackson? Mr Callahan, proceed then please.

Mr Callahan: That's Mr Runciman's original bill, that section. I don't expect to get a reconsideration by the third party, the Conservatives or the NDP in terms of 1(2) so I won't debate it, but I would like to speak to the effectiveness of restraining orders.

They certainly, in my view, are far more effective than would be even the termination of the tenancy unless we're talking about the termination of 100% of the tenancy: everybody goes, wife and kiddies as well as the offender. If you don't do that, I would think that most judges on even an application out of the Landlord and

Tenant Act or under this proposed legislation would probably say: "Well, the family are not the guilty ones. The felon is, so we'll only throw out the felon."

In fact what you'd have is them still occupying the premises and still allowing a hole for this creep to go back to, so in my view, the restraining order provides from an evidentiary basis much easier approach to the police. It's kind of like the probation order that says you can't be within 100 metres of somebody's house. All the neighbours have got to do is see you there, and they call up the police and the police come and they cart you away and arrest you.

Whereas if the guy sneaks back into the rat hole or the rabbit hole and is protected there or hidden or threatens his family and his children into not telling the police that he's there, you've accomplished nothing. He's right back there already and he's probably more indignant now than he was when you originally dealt with him. It's like spraying water on a bees' nest. You've got him really upset at this point, and if he's got any guns, he's probably going to use them to deal with the neighbours who turned him in.

The Chair: Could you read that into the record.

Mr Callahan: Yes. The motion?

The Chair: Yes, please.

Mr Callahan: Did I not do that? I thought I did. I did.

The Chair: Was that read into the record?

Mr Callahan: I must be getting long in the tooth.

The Chair: Mr Callahan, kindly read it again.

Mr Callahan: I move that subsection 1(4) of the bill be amended by striking out "terminating the tenancy" at the end and substituting "restraining the person convicted from returning to the premises referred to in subsection (1) until his or her sentence has been served."

1120

I'd just address one further item which perhaps needs explanation. Mr Jackson, I think, when we were talking about it earlier, said, or somebody did, that's not long enough. I would suggest to you that in most cases for trafficking or importing, the sentence is a jail term. In most cases, if the judge is going to exercise his authority to try to keep them from doing this again or keep them away from certain groups or whatever, he's going to put them on probation. A person can be placed on probation for I think up to life in certain cases.

So literally what you've got is that you've given the court the power to keep that person out of the non-profit or the low-income housing, a group we heard from—is it MT—

The Chair: MTHA.

Mr Callahan: You can eliminate their problem by doing that for ever. It's unfortunate we have to go through these loops to try to get to this result when the best way it could be done would be to eliminate this barrier that seems to exist between provincial and federally appointed courts, and hopefully we'll do that.

Mr Runciman: I just want to reiterate that I think moving to restraining orders as an alternative to speedy

eviction is a significant weakening of the legislation. What kind of testimony have we heard in the last two days with respect to the effectiveness of restraining orders? Absolutely none.

I think to try and make a decision in support of what Mr Callahan is suggesting today would not be responsible. I brought in this legislation because of the concerns of many, many tenants across this province with respect to this significant problem, and my view is that we should be passing this legislation and it should be going to the government in terms of calling it for third reading.

If indeed there are problems with constitutionality, problems with a host of other areas, the government can propose amendments and then we can have meaningful hearings, not like this post-haste kind of effort we've had here with two days of hearings, a day of deliberations, suggestions like replacing the speedy eviction with a restraining order. The use of a case example from a hostile witness is justification, perhaps partial justification anyway.

I think it would be totally irresponsible for us to support the amendment at this stage of the game. Again, I appreciate what Mr Callahan is attempting to do, but I think it's wrongheaded.

Mr Winninger: In light of this restraining order popping up again in Mr Callahan's amendment, and now that with the cooperation of the legislative research I've obtained the Criminal Code, I just thought I'd make brief reference to section 737. I know Mr Callahan, who used to do criminal law work, would be familiar with this. This concerns the making of a probation order.

What it says is, "The following conditions shall be deemed to be prescribed in a probation order," and it goes on to talk about keeping the peace, being of good behaviour. It provides for a series of orders that judges can make, abstaining from weapons, alcohol and so on.

Then at the end it has that catch-all section in paragraph (h): "comply with such other reasonable conditions as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences."

Then you go to the annotations, and under the heading "Banishment and similar terms," and it refers to a case of *R v Pederson*, it says: "It was not inappropriate to impose a term of probation on a young accused, with a record for drug offences, that he refrain from entering an area of the city which was notorious for drug trafficking."

It seems to me quite clear that all the authority a judge needs at the General Division level is right here in the Criminal Code. I don't know why we have to have amendments presented. I realize Mr Callahan's motives are probably quite pure and presented in the public interest, but if we already have it clearly stated in the Criminal Code and judges do it every day, why are we bothering about this kind of amendment? That's the answer I need from Mr Callahan.

Mr Jackson: When Mr Callahan shared this motion with me earlier this morning, I indicated to him the point that I felt there currently was in the code an application

for restraining orders and, secondly, they don't work very well, and, where possible, they're to restrain them from their victims, not from your own family member.

I think that this committee would need some time to analyse the implications of a law which separates the family, at least with the conservative purpose of our bill. Although it's deemed to be harsh by many people, the family unit is removed and the family unit can be maintained, whereas Mr Callahan's motion separates the family in a more direct way.

It now says that you can't see your wife and child under any circumstances, whether the child's terminally ill or—conjugal visits are a right that you enjoy in this country; this is denied to you under his. What we're trying to get this committee to focus on—

Interjection.

Mr Jackson: Well, no. You're not suggesting that the restraining order be from the neighbours; you are saying that this is to restrain them—

Mr Callahan: From the premises.

Mr Jackson: —from their own premises. Their premises is where their wife and children are living.

Mr Callahan: They never go outside?

Mr Jackson: My point simply is that we're trying to get this committee to understand where we're coming from, that there is a victimization. Mr Hood's cogent testimony clearly set out the circumstances where his daughter was multiply raped and restrained illegally. There was a conviction. Those rapists were convicted but still maintained the residence in the apartment unit adjacent to Mr Hood's family and the grandchildren, the victim's children.

That is what we're trying to get at here: A restraining order does not work. I've had experience working with women's shelters in assisting them with victims' rights with respect to restraining orders. They do not work. The onus is now on the victim to report to the police and hope to God, after we heard from Norm Gardner, that we can get a policeman to come to deal with the matter of a restraining order when in fact we're trying to keep our police focused on the dealing of the drugs in the first place.

I accept that he's trying to do this amendment with good intention, but in fact it is not the purpose which we are intending and hoping for the bill, and it's certainly not from the four tenants who were our last deputants yesterday. It is clearly not what they were asking for. They were very clear in saying, and they're on record, that a restraining order won't work.

Mr Callahan: First of all, with reference to my good friend from the New Democratic Party, you read the cases and you'll find that the probation order has to be at least linked in some way with the charge. You might have to go a long way to simply say that, because that's where they peddle drugs from, you can keep them from the house. I would doubt it, but you might be able to.

In any event, I want to go back to Mr Jackson's comment on a restraining order. You're quite right that what I'm trying to do is salvage this bill, because if it isn't salvaged, then the government, even if they've got

their marching orders already, will be able to legitimately say, "The reason we struck down your bill is because of the ineffectual application, because it only goes to 20% of the cases in the General Division." They're going to also argue, if you try to put in the provincial court, that it's unconstitutional. Those are the arguments they're going to use. They're bogus, but that's what they're going to use.

The purpose of my amendments is an attempt to try and put this bill at least in order sufficiently that the government cannot, unless it's playing political games and doesn't give one hot damn about the drug problem or the people of this province—give it at least one chance of being able to be accepted by the government as opposed to giving it ways to get out of it. That's the reason for the restraining order.

Finally, the restraining order, although you may have had experience with them not working, I'm going to tell you they do work. In fact what you do is—you ask any police officer or crown attorney—you give them a quick way to be able to send the cops out and pick this person up and stop them from doing what is contrary to the restraining order.

If you don't have that and all you've got is an eviction, as was said by some of the deputants here, all you do is move the problem from a location at one point to another location. It's an odd syndrome, the NIMBY syndrome in drug trafficking, not in my backyard. I don't think that solves anything.

1130

By the restraining order, you have in effect placed some longer-term restrictions, which the public is calling for today, on people who are involving themselves in criminal activities so that the police can keep track of them and can identify them. When a restraining order is made, it's entered on to a computer, on to a CPIC record. The cops have got access to it.

Finally, and I'll shut up, because it's obvious I'm not getting to anybody here, I've had police officers who have tapped in a licence plate number of a car, discovered that the people in the car were on a restraining order and were not supposed to be in a particular locale around kids or whatever, and they arrested the person. If it hadn't been for that restraining order, that person, who was a paedophile, would have had access to the young children who were in that school yard.

I suggest to you that when it comes time to vote for eviction versus restraining order, for all the reasons I've made, I think the restraining order also is a much better remedy. Having said all that, in all likelihood, I am going to support this bill, because I think the government's playing Mickey Mouse games over there. They're going to vote against it, they're not going to support it, and that says a lot. I think it says a lot to the citizens of this province. When it's within their marching orders, within their agenda, then it's okay, but if it's not within their agenda, then the hell with it.

Mr Phillips: The problem I'm facing is I feel like I'm polishing up the car and vacuuming it, but it's going to be towed away to the junkyard. These are good, but I feel

I'm torturing myself sitting here. For whatever reasons, and I don't impute motives, the government members have weighed the bill and decided on balance they're going to vote against it. I have no difficulty with that.

Mr Curling: They're following instructions.

Mr Phillips: I've weighed the bill and on balance I'm going to vote in favour of it. I don't mind spending all the time on it, but I feel like I'm vacuuming the car and fixing the rust spots when we know the tow truck is coming to take it to the junkyard anyway. I feel I should be doing other things. I know earlier in the day Mr Runciman suggested it. I don't know whether there's a way. I feel I'm betraying my good colleague here by saying it, because there's lots of good debate we could have. I'm starting to feel a little bit frustrated.

Mr Runciman: Mr Chairman, I'm prepared to go back to my original request that we do move on to the final comments and final vote.

The Chair: Let me call the question on this particular amendment and then see what people feel about the rest.

Mr Callahan: I'd like a recorded vote.

The Chair: All in favour of Mr Callahan's motion?

Ayes

Callahan, Curling, Phillips (Scarborough-Agincourt).

The Chair: Opposed?

Nays

Cooper, Duignan, Jackson, Jamison, Malkowski, Murdock (Sudbury), Runciman, Winninger.

The Chair: That is defeated. There is a sense perhaps that we might—

Mr Jackson: No, Mr Chairman. Let's finish this bill and do justice to what our committee has been assigned. That's our position. Mr Phillips's comments were spot on.

The Chair: Very well. We're close to the end. I'd rather we move through the amendments as best we can.

Mr Jackson: Let's finish the bill.

The Chair: Mr Runciman, subsection (6).

Mr Runciman: I move that subsection 1(6) of the bill be struck out and the following substituted:

"Power of court

"(6) The court that hears a prosecutor's or landlord's application under this act may order that the tenancy be terminated and that a writ of possession be issued without further notice."

This is really deleting unnecessary opening words, since in each case the court will be the Ontario Court (General Division). So it's efficient to refer simply to "the court."

The Chair: All in favour of Mr Runciman's motion?

Ayes

Jackson, Runciman.

The Chair: Opposed?

Nays

Callahan, Cooper, Curling, Duignan, Jamison, Malkowski, Murdock (Sudbury), Phillips (Scarborough-Agincourt), Winninger.

The Chair: That is defeated.

Mr Callahan: I move that subsection 1(6) of the bill be struck out and the following substituted:

“Power of court

“(6) The sentencing court or the Ontario Court (General Division), as the case may be, may make the restraining order without further notice.

“Offence

“(6.1) A person who contravenes a restraining order is guilty of an offence and upon conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.”

I presume that this is out of order since—it's too bad.

The Chair: That's exactly what I was going to do. Since subsection (4) has failed to make direct reference to this, I would rule this out of order.

Subsection (9), Mr Runciman.

Mr Runciman: I move that subsection 1(9) of the bill be struck out and the following substituted:

“Landlord and Tenant Act

“(9) Despite subsection 80(1) of the Landlord and Tenant Act, a tenancy may be terminated by an order under this section or under part IV of that act.”

This amendment is to make it clear that the remedy provided under this bill is in addition to the remedy in the Landlord and Tenant Act. The subsection as originally drafted we felt achieved the same result but the amended version is in plainer language. There was some concern about the language.

Mr Callahan: We're going to support this. In fact it's an amendment that we were putting forward, but it was put forward by Mr Runciman first. It makes sense. I think there were some references from the witnesses that there might be the possibility that if this act were to be passed—ha, ha; I hope that got on to Hansard—it might in fact preclude the only remedy that's available to landlords now to get drug dealers out of their houses, which is under the Landlord and Tenant Act—ha, ha. I'm going to support it. It's the same as our motion that we had put forward as well.

The Chair: Further discussion? Do you want a recorded vote? All in favour of this motion?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That is defeated.

Mr Callahan has already indicated that his amendment was similar to the one that we just dealt with, so we'll go back to subsection (1).

Mr Runciman: I move that subsection 1(1) of the bill be amended by inserting after “convicted” in the second line, “in the Ontario Court (General Division).”

We've had considerable discussion on this in respect

to the problems related to the jurisdictional questions, so the bill has been amended to provide that it applies only to convictions made in the Ontario Court (General Division). We've talked about the shortcomings of that, but it appears that is necessary.

The Chair: Debate? Seeing none—

Interjection: Recorded vote.

The Chair: On a recorded vote, all in favour of the motion?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That is defeated.

Mr Runciman, subsection (2).

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Mr Runciman: I move that subsection 1(2) of the bill be amended by striking out “sentencing” in the fourth line.

The Chair: Discussion, Mr Runciman?

Mr Runciman: I thought I spoke to this earlier.

Mr Callahan: Recorded vote.

The Chair: That's fine. On a recorded vote then, all in favour of the motion?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That is defeated.

Now we go back and we'll vote on the section as a whole.

All in favour of section 1?

Mr Callahan: Isn't there an amendment to subsection 1(3)?

The Chair: No.

Mr Callahan: I've got one before me, Mr Runciman moving—

Mr Jackson: That was voted on and defeated.

The Chair: Yes, they were all defeated, Mr Callahan.

Mr Callahan: Is that right?

The Chair: Yes. All in favour of section 1, on a recorded vote?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: That is defeated.

Section 2: All in favour of section 2? Section 2 and section 3, let's do that at the same time, on a recorded vote.

Mr Runciman: Same vote.

The Chair: Same vote? Same vote as before, very well. Okay, that is defeated.

Shall the bill carry? The bill does not carry.

I'll just read the final words into the record. Ordered, that the Chair report to the House that Bill 20, An Act to protect the Persons, Property and Rights of Tenants and Landlords, and the French part, not be reported.

Mr Runciman: On a point of order—

Mr Jackson: We haven't had—I'm sorry, Mr Chair—

Mr Runciman: Let's get an understanding here.

Mr Jackson: You moved very quickly. We would like a vote on the bill, as amended.

The Chair: We did "Shall the bill carry?" There were no amendments passed.

Mr Jackson: We had asked for recorded votes from here on in. I thought you were calling for the recorded vote as opposed to the verbal, and that caught me off guard.

The Chair: Very well. Okay, we'll go back to it.

Shall the bill carry, on a recorded vote?

Ayes

Callahan, Curling, Jackson, Phillips (Scarborough-Agincourt), Runciman.

The Chair: Opposed?

Nays

Cooper, Duignan, Jamison, Malkowski, Murdock (Sudbury), Winninger.

The Chair: The bill is defeated.

I'll read this into the record again. Ordered, that the Chair report to the House that Bill 20, An Act to protect the Persons, Property and Rights of Tenants and Landlords, not be reported.

Mr Callahan: No, no. We're going to vote on that too, vote against it.

The Chair: No. We already voted against it. This is just a statement that follows from this bill not passing.

Mr Jackson: Mr Chairman, could I ask the clerk how one deals with the House leaders and the House asking us to take a bill, and where does a committee, or at least one political party, have the right to block a bill from returning?

The reason I ask it if this was a minority government, it would absolutely stymie every bill. My understanding is a bill has to be reported to the House. It can be reported that it was defeated, it can be reported any number of ways but a bill has to be reported.

You couldn't take a major bill from the Liberal government in 1985, under minority government, send it to committee and have the two other political parties gang up on the government of the day. My understanding is that a bill has to be reported.

I don't wish to be complicit in a process which

disrupts the directions of the House and I believe we're guided by that. The bill can be reported in any fashion but it must be reported. That was my understanding.

The Chair: And my understanding of the process is that it is reported, but the way it's reported is exactly the way I read it, as I understand it.

Mr Jackson: I did ask the clerk for the clarification for the record.

Clerk of the Committee (Ms Donna Bryce): The procedure is that the committee report to the House that the bill not be reported.

The Chair: I wish I could be helpful, but that is the only reporting that we make.

Mr Jackson: Where is the precedent in that?

Clerk of the Committee: That's the normal process for bills. Now the wording may not be identical to what I've just said, but that is the general way of the committee reporting back to the House on that happening in the committee.

Mr Jackson: On any bill? Boy, that could have devastating effects on a minority government. I find that hard to believe but I'll accept the position.

Mr Callahan: On a point of clarification: When that goes back to the House, is that debatable in the House?

The Chair: I'm not sure it would be.

Mr Callahan: I'd like that looked into because if it's not debatable in the House, then the net result is that on second reading this bill was passed in principle, referred to a committee, came to a committee, heard extensively from witnesses, time, money and energy were spent, and it sort of disappeared. I find that bizarre.

The Chair: We can check, and if there's something to report, we'll report it to you.

Mr Jackson: May I make a suggestion, Mr Chairman? Could we stand down the issue of reporting to the House until the committee has a chance to get clarification through the Chair? The committee can be reconvened by you, Mr Chair.

The Chair: Can I suggest, why don't we recess for a few moments, we'll check to see what can be done and perhaps we can give you an answer. Would you like that?

Mr Callahan: Weren't we going to do our closing arguments? We could do that while we're waiting.

The Chair: I think we did that. Can we recess for a few moments? We'll get to whatever answer is available.

Mr Runciman: No. On a point of order: You said you think we had our closing comments, and I certainly, as author of the bill, said earlier that I wanted an opportunity—I wasn't going to participate in what was going on. Are you saying now, as the author of the bill, I won't be afforded an opportunity to have some comments?

The Chair: But do you recall—I'm sorry. When I called for whether the section to be dealt with—when there's a debate on section 1, that's when you have the debate. If it doesn't pass, you argue as to why you might support it or not support it. Presumably, if you wanted to debate it, that was the time to do so and there wasn't any debate.

Ms Sharon Murdock (Sudbury): Mr Chair, if I might—

Mr Jackson: Mr Chairman, to be helpful—

The Chair: Hold on. Sharon had her hand up first.

Ms Murdock: My understanding was as Mr Jackson's understanding. Sorry, but my understanding, and in other committees where we've handled bills, they usually do have closing statements at the end. So my understanding was the same as theirs.

The Chair: All right. You both may have that understanding, but the way things go in committee is that if you want to debate, you debate at the end, not once the whole thing is over but rather while the section is being dealt with.

Ms Murdock: I understand what you're saying, yes.

Mr Callahan: On a point of order, Mr Chair: We must have had unanimous consent, because that's what I understood the case to be, and I think anybody here, a fairminded person who heard it—

Mr Jackson: Mr Chairman, could I assist you as a fellow Chair?

The Chair: Absolutely.

Mr Jackson: When you have the motion on the floor as to how to report this item to the House, then there can be discussion on the motion to report to the House.

The Chair: Obviously it wasn't a motion.

Mr Jackson: No, I said "when." Are you saying that the motion to report to the House is not a motion? Is that what the clerk is telling you? Then if it's not—

The Chair: It's a statement I make; it's not a motion.

Mr Jackson: Then if it is simply—

Interjection.

Mr Jackson: I'm sorry, somebody has the floor here. If you are simply reporting to the House, then you have to return the bill to the House and report that it was dealt with.

The Chair: Several things: We were voting on the bill. The opportunity to speak to the bill was at that time when we were discussing the sections or even at, "Shall the bill carry?" You can even have a debate then, at that time.

Mr Jackson: That would have been fine then.

The Chair: In terms of how we now deal with this issue of reporting, which is really what I think you want to deal with, I was suggesting that we wait a few moments to get a sense of what else we might do to be helpful to you, but otherwise we have voted on this.

The ruling of the Chair on these matters is, in terms of the process as I understand it, we report that there be no report. If you'll allow us a few moments, if this is what you want, to see if there's anything we can do to be helpful, then I recommend that as a strategy.

Mr Runciman: Mr Chairman, I have no problem with waiting a few moments but I would like to request that you ask for unanimous consent to allow one representative from each caucus to have up to five minutes to sum up their views in respect to this legislation.

The Chair: Let me just test the floor. Is that some-

thing that you want? Mr Duignan?

Mr Noel Duignan (Halton North): To solve this issue, I would even move a motion to allow five minutes for each side to wrap up.

Mr Runciman: We don't need a motion if we have unanimous consent.

The Chair: Just to test it, that's fine. We can do that. All right. There is a sense that people from each caucus want to speak up to five minutes then on this matter?

Ms Murdock: Each side, each party up to five minutes.

The Chair: All right. Very well. Mr Runciman, do you want to begin?

Mr Runciman: Well, I think I should close as the mover of the bill.

The Chair: Mr Callahan?

Mr Callahan: Well, our day is over, I'd like to say our work is done. I don't think it is. I think that the vote on this bill throughout by the New Democratic Party members clearly indicates that they never intended even to give consideration to the statements made by the witnesses who came before this committee.

1150

I think that's really unfortunate. The reason I think it's unfortunate is that we heard some very serious statements here about the problems with drugs in Metropolitan Toronto and the other major cities in this province. What we said to them in essence was: "Sorry. You've got a right to do this under the Landlord and Tenant Act, and that's good enough. You can line up behind the people who are trying to throw the tenant out because they had too many cats or the people who didn't pay their rent or the people who caused damage to the property. You can line up behind them and decide that's where you get your remedy." I suggest to you that's exactly what this message is that's sent out to those people who are suffering the dangers of drug dealing and guns and all the rest of it. That's what you've sent to them.

I think what Mr Runciman was trying to do, and what I was trying to do in assisting him, was to at least make by amendments the bill applicable to the totality of the drug problem as opposed to just 20% or whatever it was in the General Division court, and to test the waters to see whether or not you people were genuinely concerned about this issue. The message I get and the message my constituents are going to get and anybody who reads Hansard is going to get is that you people really don't care.

Mr Curling: Namely, the government.

Mr Callahan: That's right. The New Democratic Party government doesn't care. You've got your own agenda. Your own agenda is withdrawing drugs from the formulary so that schizophrenics have to wander the streets and can't get them. Your agenda is the Rae days, where you take money from all the civil servants and put our correctional facilities at risk because the number of officers required aren't there.

You take police officers perhaps off the street to save money. Yet you're prepared to play the charade to come

here to hear from witnesses, to waste their time. You're not wasting our time; we're being paid for this. But I find that absolutely the most unconscionable thing for a government that says it's there for the little person, it's there to try to look after the law and order issues. That's a total crock, I have to say, and it's really tragic, because the people who came here, in the main, although some of them may have been a little more sophisticated than others, came here legitimately.

The one drug officer came here and he said, "Jeez, I just got this dropped on my desk at the last minute, but I'm here and I want to tell you what the problems are." What message do we send to that officer? He hears the bill didn't even get supported in one principle by the New Democratic Party government. What message does that send to that officer and to his fellow officers on the street? It says the provincial Legislature, now occupied by Bob Rae and his cabinet ministers and so on, in fact is just playing games.

They're saying, "Sure, Mr Runciman, we'll bring these people here, waste their time." Why didn't we tell these people right at the outset? Why didn't you do it up front? Why didn't you say, "Mr Runciman, you haven't got a prayer of getting this thing through," and send it to each witness? "You can't get it through. Just go home, get out of here. Why should we waste your time?" That's what you did: You wasted their time on a very serious issue.

Now, I know we play politics in this place. Oddly enough, I find it objectionable. I think committees should have a much broader ability to be able to be non-partisan and to be able to do something for the citizens of this province. That's not the way the game is played at the moment because the rules don't allow it.

But I find it really objectionable, on an issue as serious as this, that you would play politics, that you'd allow the Minister of Housing to tell you as duly elected representatives that you cannot vote for one iota of this bill because it's not within the Agenda for People that Bob Rae has for the province of Ontario.

Mr Jackson: Or the court for that matter.

Mr Callahan: Let the drug dealers have a great time. Let the people who live next door to them be in danger for their lives, for their children. That's the message we've sent out. I'll tell you something. You had an opportunity to really come up, in my opinion, before the people of the province by at least taking the initiative to say to the Minister of Housing, "Take a hike." And it has been done.

Mr Winner: Point of order, Mr Chair.

The Chair: He's got about 30 seconds, Mr Winner.

Mr Callahan: I guess I'm not allowed to say, "Take a hike," to the Minister of Housing, but I think a lot of people would like to tell her to take a hike.

The Chair: You've got about 30 seconds, 25 seconds.

Mr Callahan: Finally, in the 12 seconds which have already been eaten up by the point of order, I would like to say—

Mr Gary Malkowski (York East): On a point of order, Mr Chair: You've gone beyond five minutes.

The Chair: I'm just giving him another 20 seconds.

Mr Callahan: I would just like to say in closing that this was one of the areas where I would've thought you would've at least looked at, considered, the amendments that were being put forward by the Liberal caucus to try to make this bill work, and at least said something. You have when you voted against it. That tells me a lot.

The Chair: Mr Runciman.

Ms Murdock: It isn't Mr Runciman.

The Chair: I'm sorry.

Ms Murdock: There are two of us and we're going to split our five minutes.

The Chair: Go ahead, please.

Ms Murdock: I just wanted to make sure that it was on the record that certainly it can be characterized that because we all have voted against this we don't have any concern for the situations that have arisen with drugs, particularly in housing. It can be characterized that way, but I'd like it clearly stated for the record that when this was raised in private members' hour I opposed it then; I oppose it now. I stated yesterday in Hansard that I would be opposing this. I have made no bones about that.

I think the premise that we have come here with is that this wasn't a good bill in the first place. If you operate on that premise, then any amendments to what one considers a bad bill it doesn't make sense to be bothering with. Therefore, I think that was first and foremost.

I would like to say, though, that the reasons why I am opposed to this bill, and I have made three points: One, initially and still, that other family members are possibly affected; that the existing landlord and tenant law allows earlier conviction even than this bill would allow; and that a lesser standard would be followed.

The overlap in jurisdictions, in my view, is a problem. It has been stated here by members of the other parties. The potential to stay this in the lower court process pending a decision from the criminal court is there, and I think this is a real problem.

Yes, it is true that we've heard quite serious statements from a number of people, but we've also heard a number of presentations that stated they didn't like the bill but, if the bill was going to pass, they would make these recommendations, and I think that's important too, that we did listen to people who did make presentations here and not, as Mr Callahan said, waste their time.

Mr Winner: Naturally, I endorse the learned submissions of my colleague from Sudbury. In addition, I'd like to say this. We all know that Mr Runciman or at least I feel that Mr Runciman brought forward this bill to make a statement, and I think in principle a number of our members agreed with that statement, some of whom voted in favour of the bill and some not. The principle is that we need to deal strictly with people who traffic in drugs. Whether it's at MTHA or another housing authority or in private residential apartment complexes, we need to deal strictly with these people.

Unfortunately, this bill is not the tool to achieve that principle with. Many, many criticisms were levelled at this legislation. Many of the tenant advocacy groups

suggested it was discriminatory in that it dealt harshly with tenants by depriving them of their homes while at the same time completely ignoring the situation of all drug dealers who may own their own property rather than as tenants.

Secondly, it didn't differentiate between the offender and family members and other co-tenants of the offender. They too would be evicted from their homes.

Thirdly, it was argued that the object of the bill is futile in that it simply moves the offender from one apartment building to another. We had the evidence of Mr Verschuren of Greenwin Property Management that in one case they evicted a tenant for an illegal act, that tenant then moved in on the other side of the street into another building and just continued with the same kind of illegal acts.

Quite clearly the objectives of the bill are not achieved even in the minds of the few presenters who came and supported what Mr Runciman was trying to do. But we listened very carefully through these hearings to the overwhelming number of presenters who opposed this bill. I might just come back to one of the very first, Kenneth Hale of the Tenant Advocacy Group, who said this bill was unconstitutional, unnecessary and unconscionable.

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Later on we also heard from Ray Kuszelewski whose whole practice of law is devoted to these kinds of landlord and tenant matters. He said, speaking on behalf of Parkdale Community Legal Services, which has a very long and distinguished history in representing people in landlord and tenant matters:

"It is our position that the bill is, in and of itself, unconstitutional both in its purpose and scope. It is unfair in targeting tenants. It has no proven redeeming social value in its purpose or effect. It is vague.

"Simply, among other things, it creates an added punishment for a criminal offence which clearly lies outside the bounds of provincial jurisdiction."

We've got a Criminal Code that can deal with offences that can prevent them from going back to the neighbourhoods where they perpetrated their crimes, including trafficking in drugs. We've got a Landlord and Tenant Act designed in a summary way to evict people for any number of illegal acts from the premises.

I come back to my original point. This was initiated as a political statement, went a little further than I think Mr Runciman expected, and I don't think he's at all surprised that the government, both on principle and on the basis of all the evidence it has heard over the last few days, would vote against it and defeat it.

Mr Runciman: Mr Winninger said a couple of times that I was surprised on second reading that the bill passed, and that's not really true. I had no preconceived notions. I knew there was a major concern, especially among Metro people. I know that Mr Mammoliti has mentioned it to me. It's interesting the only NDP representative here from Metro is Mr Malkowski. The rest do not represent Metro where this is a significant problem.

I find it astonishing that Mr Winninger would use as

justification for his caucus's position today the testimony that we heard. He said an overwhelming number of presenters were opposed to this. I don't think anyone would categorize the appearance as overwhelming in terms of opposition, and those people, it was clearly indicated yesterday, were misleading a standing committee of the Legislature. They were what I would call distorters of the truth.

He mentioned a number of them. The Parkdale representative said there were no significant problems with drugs in the Parkdale area. We heard from a police detective sergeant it is one of the major focus areas for the police in Metro Toronto. It is a significant illicit drug area.

He also said the MTHA was working well in terms of speedy evictions. We heard tenants, we heard a past chair of the MTHA say that was a complete falsehood. They were misleading this committee with that kind of testimony.

We had a representative of the Bathurst Quay tenants, supposedly representing tenants, saying no problem with drug dealers in the 51 Division. Again it was pointed out that was a complete and utter fabrication presented as testimony before this committee.

Mr Winninger has the unmitigated gall to use that kind of testimony as justification for a position taken by the NDP. We've heard those same people say that in dealing with drug dealers, this was cruel and unusual punishment, a lot of sympathy. Double jeopardy, Mr Winninger said. This is double jeopardy for those poor folks who are out there as purveyors of drugs in our society. A violation of their rights, we heard from others.

It was suggested we take landlords to court or that we have tenant meetings to talk to these drug dealers. Those were the kinds of suggestions being made here by those so-called credible witnesses who, I reiterate, misled a standing committee. They distorted the truth, and if there were some way we could take action against them, I would recommend that it be taken.

What they're talking about is supporting these merchants of death and disease and not doing anything to support tenants. We even heard testimony of the tenant associations being infiltrated by drug dealers. We heard from the tenants, the people who are out there on the front lines who have to live with this day by day, that the lobbies are being taken over. They feel like they're locked in a prison. We heard the detective sergeant talk about all the instances. In fact, in one high-rise, he told me earlier that an explosion occurred when drugs were being mixed and it's just fortunate there weren't major casualties—those kinds of things.

We heard a man telling us about his wife dying in his arms as a result of a drug dealer coming into their home. We heard about his daughter being raped and held hostage for four days and then attempting suicide by setting herself on fire as a result of what happened with drug dealers in his apartment building.

Mr Winninger talks about phony witnesses appearing here as his justification for the government's view. Well, we've heard from the mayor of Metropolitan Toronto. I

circulated a letter today from the mayor of Metro Toronto, who says what a serious problem it is supporting this kind of legislation. We've heard from a member of the police commission. We've heard from a past chair of the Metropolitan Toronto Housing Authority. We've heard from another board member. We've heard of tenants who have to live with this on a daily basis. What we're talking about here is victims.

I admitted at the outset that this legislation was not perfect, but I did hope that we could pass this through so that the government would then be in a position to make amendments, to make changes, because this is a very serious problem, and you shouldn't be suggesting by phony testimony that it isn't. You had an opportunity here, which you've now cast aside, to recognize the problem. What we're talking about here is victims and victims' rights. In the past, we've had victims' rights legislation introduced by Cam Jackson and defeated by both the Liberals and the NDP.

We have an opportunity here to send out a message, and the message we're sending out is pretty discouraging. We're prepared to subsidize drug dealers in public housing through taxpayers' money. We don't have enough money for policing, but we have money apparently to subsidize these drug dealers to operate out of public housing.

I think this is a sad day. I don't think we had to get into political arguments. I admitted there were weaknesses in this legislation, that opposition members don't have the resources that government has. If we had dealt with this, amended it as best we could in the limited time we had and then passed it on, the government could have drawn upon its wide array of resources. We could have had full hearings. We could have talked about the things Mr Callahan has suggested, the implications, and looked at them closely. We could have done all sorts of things in respect of the constitutional questions and the jurisdictional questions, but no.

They came here with marching orders to defeat this legislation. We had some of the phony witnesses appearing before us expressing frustration that they had to appear before us. It was clear from the theme of all of their presentations that they also had their marching orders and that they had a political message to deliver here and in fact mislead the public and this committee.

I'm very disappointed that once again the standing committee has fallen victim to politics, and the public, victims and tenants in this province will suffer as a result.

Mr Jackson: Mr Chairman, this is not on the debate. I have a legal issue to raise that flowed from one of the deputants. For the record, I've sought legal counsel and I wish to put a matter on the record for this committee.

During the course of the hearings on this bill, I asked several legal aid clinics what advice they gave to tenants who found that they were being victimized by criminal conduct. Two of the deputants, and Hansard will bear this

out, indicated they had referred the matters to the police. It's a matter of concern to me that when I asked Raymond Kuszelewski from the Parkdale Community Legal Services, he indicated that he did not in those circumstances.

The Chair: He did.

Mr Jackson: No. I was quite clear in my cross-examination of this witness. I would ask, Mr Chairman, if you would examine the Hansard and contact the Attorney General. I consider this a serious matter. As a member of the justice committee today, for the purposes of this bill, I would have concern that a legal aid clinic purports, on the basis of the response to that one question, not to treat matters of a Criminal Code nature by referring them to the police.

I believe the matter should be brought to the attention of the Attorney General. I believe I would be negligent in my responsibilities as a legislator if I did not bring that directly to the attention of the Attorney General, whether she funds this clinic or not. I have concerns about the nature of that response. I believe it deserves further examination and I would ask the Chair to do that. I don't believe it requires a motion.

The Chair: I'll look at the record. I'll look at Hansard and see what action can or needs to be taken.

Mr Jackson: Thank you.

Clerk of the Committee: Just as a follow-up to that earlier question, as I stated, the committee will report that the bill not be reported to the House. The question will be put in the House, if it is the wish of the House to receive and adopt the report. So there will be an opportunity in the House to either approve or not approve the committee report that the bill not be reported.

Mr Callahan: Any debate?

Clerk of the Committee: We'll have to check some precedents on that question, because nothing comes to mind right now.

Mr Jackson: I know the answer to that one. I've seen my motion blocking from here.

The Chair: We're trying to check that.

Clerk of the Committee: We would need more time. We can do that today.

The Chair: If there's anything, we can report to you individually. We can let you know.

Mr Callahan: Finally, I wanted to thank all of the staff, but most specifically Margaret MacKinnon. I had her burn the midnight oil last night to do these amendments at the very last moment. I think we should thank our staff. We don't do that often enough.

Just one final item. Mr Jackson said that the government had a wide array of services. Was that a play on words?

The Chair: This meeting is adjourned.

The committee adjourned at 1212.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Callahan, Robert V. (Brampton South/-Sud L) for Mr Murphy
Cooper, Mike (Kitchener-Wilmot ND) for Ms Akande
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
Jamison, Norm (Norfolk ND) for Ms Harrington
Murdock, Sharon (Sudbury ND) for Mr Mills
Phillips, Gerry (Scarborough-Agincourt L) for Mr Chiarelli
Runciman, Robert W. (Leeds-Grenville PC) for Mr Tilson

Clerk / Greffière: Bryce, Donna

Staff / Personnel:

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McNaught, Andrew, research officer, Legislative Research Service

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Official Report of Debates (Hansard)

Monday 28 March 1994

Journal des débats (Hansard)

Lundi 28 mars 1994

Standing committee on
administration of justice

Comité permanent de
l'administration de la justice

Draft report
Victims of crime

Rapport préliminaire
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 28 March 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 28 mars 1994

The committee met at 1554 in room 228.

DRAFT REPORT

VICTIMS OF CRIME

The Chair (Mr Rosario Marchese): I call the meeting to order. We have a report on victims of crime that Andrew McNaught has prepared, obviously to review with the members. We could begin with that today, go through the recommendations in fact, and discuss each recommendation as it comes, page by page, or any other way you might suggest.

Mr David Winninger (London South): I believe the draft report was sent out last Wednesday, and I have had a chance to look at it in a preliminary way. A number of changes have been made since we last went over the first draft many months ago, and of course some of our recollections may have dimmed a bit in terms of exactly what was said at the time.

I, for one, would appreciate another week or so to go over the report and make some marginal notations. I know we only have three hours and change left on this particular referral, and if we're going to spend that time wisely and well, I think it would be helpful to have a little more time to focus our thinking on the contents and the language of the draft report. For that reason, I'd be asking for at least a week's adjournment on this particular report.

Mr Cameron Jackson (Burlington South): I received mine on Friday. I worked on it for about three and a half hours yesterday. I like the suggestion being made, but I did come prepared today with extensive notes on the report, so it may be helpful that those are shared now so my colleagues can have access to what my thoughts were.

I will say that I'm somewhat disappointed that on December 21, 1993—perhaps I am guilty of not making it abundantly clear to both the clerk and the researcher, but I had hoped that I had conveyed my understanding that as soon as the response from the ministry had been received by the clerk, I would get a copy of it. The fact that this information has been sitting in the researcher's hands for almost three months is cause for a bit of concern on my part.

Having said that, I'm prepared to work with whatever time lines, but I undertook a fair bit of work on short notice and would probably have done more justice to it if it had been shared as I had requested.

I'm amenable to the suggestion simply because there's a substantive amount of information here to be examined. I've tried to read through the police report on victims'

assistance and I have several questions that flow from that. Maybe we could spend a few moments today to direct a couple of further questions if the Chair and the committee determine to reconvene next week and proceed in earnest on the amending of the report.

The Chair: Of course. Mr Murphy, do you have any comments on this?

Mr Tim Murphy (St George-St David): No. I'm basically happy to do what Mr Jackson desires, subject to the committee's view. It doesn't matter to me. My view is that whatever's the most efficient way to do this is the best way, and I'm more than happy to be subject to Mr Jackson's views in that regard, at least for now.

The Chair: Mr Winninger and Mr Jackson would like to put some questions to the committee before we reconvene, as a way of helping us all out, in terms of addressing your concerns. Is that what you're asking?

Mr Jackson: What I was suggesting was that the extensive amount of material Andrew has shared with us has given rise to a couple of requests for additional information—not to be frightened by that; just some minor requests that flow from the documents we received. I think that would be in order and that's what I would like to share. If you want specific language and areas, I'm prepared to discuss that, if you wish. I have a couple of areas that I saw are strengthened or could be weakened.

There is perhaps one item which I should table with the committee. It's about the language around the rejection of the victims' bill of rights. To write in the report that it was the committee's opinion that this was frivolous—I don't know if that really reflects. If there's a decision that we not proceed, I could live with that, but I'd like to serve notice that I can't live with the language that involves at least my colleagues with that statement. I think it could be treated differently and say something differently but achieve what the government wishes.

The Chair: I think we could allow Mr Jackson to make some remarks, if that's what you want to do today. Once we have done that, we can adjourn until next week. Just to remind you, we have approximately three hours and 45 minutes left for this. Mr Jackson, proceed.

1600

Mr Jackson: The Solicitor General—the reference is on page 34 in this document, Victim Services Review, Ontario Police College—references six different documents, reference materials. Is it possible to secure copies of those reference materials? That would just be a request.

On page 8 of the actual report, I was suggesting we should indicate that there is a statute of limitations on applications for criminal injuries compensation, and nowhere in the report does it say that you have to apply within a certain specified period of time or else you're ineligible. When you read that it makes it sound like it's open-ended. It's just a matter of information, and if it's possible to indicate that since we're going to talk about civil litigation, we should talk about subrogation rights.

The principle is that if you go and apply to workers' comp, you subrogate your rights to the workers' comp and you can't sue. The similar principle in law is in effect for criminal injuries compensation, so the Criminal Injuries Compensation Board inherits your subrogated rights to recapture the moneys they pay on your behalf. That again is not clear.

Mr Murphy: I just want to clarify that. Maybe the researcher knows this. I thought, and I could be wrong in this, the subrogation right was to the extent of the award by the Criminal Injuries Compensation Board—

Mr Jackson: That's correct.

Mr Murphy: —and you don't give away your right to sue; or do you? Do you give away your right to sue and you subrogate to the extent of the compensation provided, or do you keep the right to sue and you subrogate to the extent of the compensation? Which is it?

Mr Andrew McNaught: I suspect you give your right away but I will check that.

Mr Murphy: You could probably find that right in the act itself.

Mr Jackson: My understanding is you give your right away, and that is a function of the size of the award.

Mr Murphy: That might be important because there might be a recommendation that arises out of that distinction.

Mr Jackson: I have one that's for that and I'd rather share it with the committee and then we can deal with it, but it flows from that piece of information.

Let's see. Funding of victim services: If we were to look at the Victim Services Review, Ontario Police College, at the bottom of page 20 in the footnote it sets out how complex the issue of funding victim services is in the province of Ontario. Just to read that indicates by my count five different government or ministerial levels. When I read that it triggered for me, in the body of the main report, the fact that we really don't explain funding of victim services—we don't clarify how it's funded in Ontario.

Now I don't wish to engage the researcher in a long and complicated explanation, but it strikes me that if we're going to talk of funding of victim services, the only reference we make is the victims' fine surcharge, and we're bringing inordinate attention to the fact that we're the only province that doesn't have a dedicated fund for it, whereas victim services are funded by many ministries, by all three levels of government in a sort of complex way.

For me it was a trigger, that to deal with the issue of funding we've only referenced it in the one spot, whereas

funding surfaces in a lot of different places, like who pays for the closed-circuit TVs in our courtrooms. You know, we mentioned that it was a pilot project and now the government has extended the pilot project in Ontario. Perhaps it's not the committee's desire to deal with that. That's fine.

On page 16, we felt it was inappropriate to publish a report in 1994 stating that it was the government's intention to bring in a provincial surcharge in the fall of 1993.

Mr Winninger: Which report are you on now? Are you back to the draft report?

Mr Jackson: I'm sorry; I'm back in the main report, bottom of page 16. First of all, on page 16, Andrew did ascertain for us the accurate amounts of moneys that have been raised from this fund in Ontario, and I would ask that we insert into the report, after the second paragraph, the very short table of five years. I think it would be helpful. That was going to be a recommendation, since he did obtain the material, if there's no disagreement with that. He did get the answers to those questions for us.

Further down on the page, we talk about the Attorney General's announcement on June 25, 1993. This was an intention to dedicate funds regarding the surcharge, and the language that's used in this report should more accurately reflect a wording change. I'd be willing to share that now but I think we should also indicate not that the government announce that it's going to do it, but to give us a time line, because to date we've seen nothing on that.

On page 17, I thought the report would be strengthened if we indicated in the second paragraph—"The program currently operates in 12 crown attorney offices"—12 out of how many? Is that half? Is it 95%? That number would be more relevant if we know how many crown attorneys' offices there are. Just a suggestion, but it requires research so I think they'd appreciate having notice.

I think at one point we're referring to crown attorney's office and crown prosecution, and I wondered if we could stabilize that language. Which are we using? The coroner's report I was reading in the last couple of days referred to the crown attorney's office. So perhaps we could just check that so that we're using the proper lexicon.

I just want to bring up some stuff that may require some clarification and thought, and not get into text change, if that's helpful to the Chair.

Recommendation 12 on page 22 refers to "and child sexual abuse syndrome." I underlined it and said, just what is that, since it's not referred to in the report, other than to say a child's allegations are sometimes false? But then we jump to make a statement about child sexual abuse syndrome, and that's a very, very sensitive issue right now. I just wondered, before we put it in a recommendation we should make sure we've defined it as a term in the body of the report.

Mr Winninger: Just a clarification: Are you relating that particular phrase to what's popularly known as false memory syndrome?

Mr Jackson: That's why I raise it. I don't know what's meant by this. I read the report and it didn't tell me what was meant, but it's contained in a recommendation. I'm just suggesting maybe the draftspersons might look at it more seriously. I didn't know what it meant.

If I can suggest, on page 25 we say "Victim Services Through Police Departments"; again, "police services" is perhaps the accepted phraseology. A department and its victim assistance programs through police—that's what they're generally referred to, and that's consistent with the report from the Sol Gen. I just thought maybe "Victim Services Through Police Departments" might be changed.

I noted on page 28 "Victims and Crown Prosecutors" instead of "Crown Attorneys."

A controversial section of this bill would probably be around the victims' bill of rights. The only individual arm's-length, independent testimony was for someone who indicated they didn't support it. I really feel that since there were more people recommending it than against it, we should at least have one person quoted as supporting it in the body of the report.

For that reason, I would suggest that since Priscilla de Villiers quoted it and since the Yeo inquest, the jury of independent peers of this province, made it as a recommendation for the first time—the first coroner's report in Canada to have it as a direction—I think that fact as she tried to share it with the committee should at least be in there, because she came empowered from a coroner's inquest to implement one and she had come as her first opportunity before a legislative committee to ask for it.

In the interests of balance, to say it's simply symbolic by one individual and then not mention that many groups offered it—the contentious line is, "It is the committee's view that, while a victims' bill of rights may have symbolic value, the government should focus its efforts on identifying the deficiencies...."

I don't think the report can speak in that fashion if there's disagreement. The report should reflect that there was disagreement. We have to be very careful suggesting, whereas the report could indicate that there was not agreement. I don't believe there's anything symbolic.

In fact, to press the point, I extracted from the Attorney General her admission that the Quebec bill had teeth and it was working, which doesn't square with her saying that, by and large, they're typically symbolic. She did admit that yes, if it's done right, they can work very well in one province she's aware of, and I can draw her attention to three others.

Ms Margaret H. Harrington (Niagara Falls): What page are you quoting from?

Mr Jackson: On page 33. It could indicate that it's the view of the government members. I don't think that's particularly helpful either, but we have to be careful drawing a subjective conclusion before we get to a recommendation. We have to be very careful doing that in a report.

Those were just a couple of the items. The rest are language and we can work on that next week.

The Chair: We appreciate that. Any other comments from anyone, questions of clarification of things you would want to have considered for the next meeting?

Mr Murphy: Yes, just one thing. I'm not sure exactly where it fits in this, but it's within the context of the profits from recollection. I'm trying to remember offhand, and I may talk to the researcher after, but there was also a private member's bill by someone on the issue of the serial cards and other stuff which had been referenced in the quote and was taken out, the generalized profit from those recollections. There's also the issue of just the outright prohibition of them in some cases as a victim issue.

I think there might be some worth in referencing that bill as well, with a possible recommendation related to it as well. I might suggest that to the researcher for discussion when we come back. I think it was Dianne Poole who introduced that private member's bill. I think it would be worth discussing that in this context too.

The Chair: Okay. Anything further?

Mr Jackson: Just quickly on the issue of items not in the report that may have been included, there were matters with respect to the Coroners Act that were raised by Mrs de Villiers and Scott Newark and Irvin Waller. Although they didn't find themselves into the first two drafts, like Mr Murphy's suggestion of Ms Poole's bill, calls for changes to the Coroners Act were referenced, and if the committee wishes, I'll bring forward a recommendation for a motion. We may wish to add that as a section if they wish. I'll just prepare some information for the committee members prior to next week, if that's their wish.

Finally, I might suggest that we're not meeting as a committee next Monday. Tuesday is our first eligible day.

The Chair: That's right. We appreciate those interventions. We have a report, which we urge everyone to read, including considering some of these suggestions that have been made here today.

I'm reminded to remind you that this report is still confidential to committee members. This committee stands adjourned until Tuesday, April 5.

The committee adjourned at 1615.

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 - Tilson, David (Dufferin-Peel PC)
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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Carter, Jenny (Peterborough ND) for Ms Akande
Cooper, Mike (Kitchener-Wilmot ND) for Mr Bisson
Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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**Official Report
of Debates
(Hansard)**

Tuesday 5 April 1994

**Journal
des débats
(Hansard)**

Mardi 5 avril 1994

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Draft report:
Victims of crime

Rapport préliminaire :
Victimes d'actes criminels

Chair: Rosario Marchese
Clerk: Donna Bryce

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Tuesday 5 April 1994

Mardi 5 avril 1994

The committee met at 1553 in room 228.

DRAFT REPORT: VICTIMS OF CRIME

The Chair (Mr Rosario Marchese): I call this meeting to order. What I'd like to do is start with having Andrew McNaught, the research officer, just give us some background into what we have done over the last little while with this report, and after that we'll go through the report page by page.

Mr Andrew McNaught: The report you have in front of you, dated March 1994, is based on public hearings that were held by this committee last May and June and was drafted according to instructions I received from the subcommittee. Subcommittee meetings were held in July and again in December 1993. The highlighted text in the draft report reflects the changes that I was asked to make by the subcommittee at those meetings.

While I received specific directions on most of the issues discussed in the report, there were a couple of instances where I did not, and so I simply came up with a couple of recommendations based on submissions that were made to the committee. You can use those as a starting point for the recommendations you would like to see.

At last week's meeting I was asked to provide copies of reference materials that were referred to in the Victim Services Review which was conducted by the Ontario Police College in 1992. I've only been able to obtain one copy of those. The police college called this morning to say that they could get copies for the whole committee if we would like them, but that would take at least a week. So I'm in your hands on that. In the meantime, we have this one copy. You all have a copy of the actual report, but not the attached materials.

The Chair: What I would simply say with respect to that is, if there's a member who would want all of that, let us know. Rather than having 10 or 12 copies, we'll just give the members who are interested a copy of those reports. Okay?

Mr David Winninger (London South): I think it was Mr Jackson who actually requested that.

The Chair: We will give him this, but if there are other members who want it, please let me know.

Mr McNaught: So anyway, I guess at this point, it's probably the simplest thing to go through the draft report page by page.

The Chair: I should also point out Mr McNaught has answers to some of the questions that you have raised. At the appropriate page, we will simply give him an opportunity to give those answers.

What I propose then is that we go through the report page by page and get your responses to that in terms of omissions, additions, changes that you think need to be there. Is that all right? We'll begin with the introduction on page 1.

Mr Winninger: The indented portion at the middle of the page, does that reflect word for word the reference under 125?

Mr McNaught: Yes.

Mr Winninger: That's what I thought. Good.

The Chair: Any additional comments or questions? Seeing none, we'll move on to page 2 and the background.

Mr Cameron Jackson (Burlington South): Could we say that was a "following motion" instead of a "matter," since it is a motion as Mr Winninger has said?

The Chair: We could if there are no objections.

Mr Jackson: It doesn't make it clear why it's indented, I think is the reason. If it's a motion, then it's clear and we could—

The Chair: If there are no objections to the change of the word "matter" to "motion," we'll simply accept that.

Mr Jackson: And could we put the date with 1993? That would just strengthen it in case some of these research fanatics want to know the exact date on which the committee—

The Chair: It says in the beginning, "In 1993."

Mr Jackson: I know. I was going to give the specific date on which that motion was passed by the committee, that is all. Mr McNaught is nodding; it's not a problem. It's an exact matter. He can get it.

Ms Zanana L. Akande (St Andrew-St Patrick): Fine.

The Chair: Page 2, "Background": Questions?

Mr Winninger: Line 4, the phrase "legal fiction" appears. I would just ask, first of all, the legislative researcher whether that term "fiction" was carefully chosen from some particular text or whether the word "principle" might serve just as well as the word "fiction" there.

The concern I have is all the connotations that the word "fiction" suggests. We use it from time to time, but not really as a term of art. It seems to me that it's certainly a "principle," and I would never dispute that, but "fiction" suggests something made up or not true or not necessarily consistent with fact. Maybe I could hear from Mr McNaught on that.

Mr McNaught: It was certainly carefully chosen, but I don't think it is referring to any one particular submission that was made or—

Mr Winninger: I guess my preference would be for the word "principle" as opposed to "fiction."

The Chair: So you're suggesting the deletion of "legal fiction" and replacing that with "principle"?

Mr Winninger: That's a word that I was suggesting. If someone has a better word, I can probably live with that.

The Chair: Comments on that?

Mr Winninger: Maybe Mr Murphy, a former prosecutor, might have a comment on that.

Mr Tim Murphy (St George-St David): I'm not sure the crime is committed against the state per se; in a sense it is. Yes. I mean, it doesn't really matter that much. I understand why the opposition to "fiction." You can say "under the legal notion." "Fiction" does have a bit of a connotation to it.

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Mr Jackson: It is a fiction that it's against the state. It's a crime against the state but in fact, it's against the individual.

Mr Murphy: No, it's not a fiction that it's—I mean, it is against the state in the sense that you have a social contract that there is an agreed set of rules and it is actually a violation of the rules of the state to commit a criminal act. So it's not a fiction, as such. It is in fact a crime against the state.

Mr Winninger: As well as the individual.

Mr Murphy: As well as the individual.

Mr Jackson: Even though the individual's not named.

Mr Murphy: We could count the angels on this pin for a while, I think. So I'd think something other than "fiction," because of the connotation that it carries, is probably a good idea: "notion," "principle," who cares?

The Chair: So you're agreeing with the idea of the word "principle" then?

Mr Murphy: Sure.

The Chair: Okay. Other comments on that page? Page 3?

Mr Winninger: The first full paragraph begins, "At the provincial level." Certainly, I don't dispute the fact that most provinces have attempted to implement the 1988 declaration of principles through the adoption of a victims' bill of rights. In fact, many provinces have bills of rights. Quebec is the only one, I understand, that has a legally enforceable bill of rights.

Ontario has, as an alternative, focused its attention on improving programs and services, and some of that is mentioned in the body of the paragraph. But I think I would add mention of a couple of services that were brought up during the evidence presented to the committee, and also the announcement of the Attorney General which was made, I think, in June of last year.

So I would ask that in addition to what's given by way of example in line 5 of that paragraph, there also be mention of the victim impact statements which have

existed in Ontario, I think, since at least 1988, 1989, although there's no uniform victim impact statement. That became implemented just last Monday, on the 28th. So the victim impact statement; the provincial surcharge on fines that was announced last year.

Lastly, I would like to see added the permanent funding that was announced some time ago for the two child witness projects, one in London and one in Toronto.

Those would be the three programs or services that I would like to see added to the list of four examples.

Mr Murphy: My only objection is that—I guess twofold. One is, some of those things, I think, are mentioned elsewhere, although I understand why—

Mr Jackson: Quite in detail.

Mr Murphy: Yes, and quite detailed. The other objection I have is, if that is overridden, one of those is a promise yet to be fulfilled, which I think is the provincial fine surcharge, and so this seems to focus on specific measures taken as opposed to promised, and I don't think this is an appropriate area in which to say, "We've promised to do X, Y, and Z, and that's a measure taken." So I would object to that.

To the extent that there are specific initiatives in geographically limited areas, I suppose you could mention that if you want, although on the general principle, that I think this is adequate and those specific measures are mentioned elsewhere in the document.

Mr Winninger: Mr Chair?

The Chair: I would allow Mr Jackson, and then you can reply to both.

Mr Jackson: I support the notion that we're giving a more fulsome explanation of these announcements later in the report. At this point in the report, we're trying to make the notion that provinces have different approaches, not a whole listing of what Ontario has or hasn't done. I agree that at some point we should be exposing that, but at this point we're just highlighting a couple of examples, or in this case, an example which demonstrates the notion that even though every province but Ontario and Alberta has implemented a victims' bill of rights, Ontario's approach has been not to go that route but rather to go in making these reforms.

I think it's fine the way it is. In fact, the only way I would strengthen it is to say "the provincial government in Ontario has implemented a number of specific measures and pilot projects"—which it has—"to assist victims." Then you've given an example. You've highlighted the screens and the closed-circuit. We want to be careful getting into that, because when I checked with the deputy, that pilot project's moneys have been extended a further year; it's not permanent and absolute funding. That was the deputy's own statement, that this was an extension of the pilot program.

Screens and closed-circuit TVs have to be separated because one was implemented in most courts, whereas closed-circuit is only in two courts in Ontario. We don't want to imply that most courts have one when in fact only two have them, and those were pilot project moneys that were extended. That's the flaw in trying to clarify it

here, whereas we're going to be giving it a more fulsome treatment later on in the report. I think we're still in the introduction of this whole thing as a concept. So that's for what it's worth. If we're going to load up this front end, then maybe we can pare down further on. I think it has more impact when it's bunched together in the body of the report.

Mr Winninger: I may be able to live with what the other members have said. One thought had crossed my mind, that the victim fine surcharge had not been implemented yet, but in looking at the first line of that paragraph, where it says "most provinces have attempted to implement," I realize that other provinces may not have fully implemented their own measures under the bill of rights. As long as we deal with each of the points later, and I know the report touches on them in the body of the report, I can probably live with both what Mr Murphy and Mr Jackson said if my own colleagues can.

Just a minor point: I used to use the word "fulsome" too, but then I looked it up in the dictionary and I found out its meaning was entirely different from the way I was using it. It pertains more to smell, I think, than anything else.

Mr Jackson: It's a wine expression.

The Chair: Anyway, they must have an extended definition, for sure.

Mr Winninger: I stopped using that word because the dictionary didn't support the meaning I was giving to it, which was the same meaning that another member gave it earlier.

The Chair: I'm sure it is an evolving word.

Any other questions or comments with respect to that? Anything else on page 3?

Mr Jackson: If we get down to the second paragraph, in the middle it talks about, "Screens and closed-circuit televisions have been installed in courtrooms to allow child victims and witnesses...." On a pilot project basis, closed-circuit televisions have been installed in two courtrooms in Ontario. That's the fact. So if we're going to say it, we don't want to mislead people. Screens, on the other hand, have been provided more generously, but we don't know how many courts have them.

Mr Winninger: Just to be fair, though, I can't tell you how many courts have actually borrowed the equipment for closed-circuit evidence, but some have. Even though it's not installed in every single courtroom in Ontario, which would be frightfully expensive, they can borrow it and then the equipment is provided. I know that in London, for example, they have used closed-circuit equipment that was borrowed from the other courtrooms.

Mr Jackson: But you would agree that at no point could they be in three or four or five courtrooms simultaneously, that at no point could the two sets of closed-circuit TV equipment be in any more than two courts on any given day.

Mr Winninger: The equipment can be rented. I don't think it's that specialized equipment that it can't be rented for that purpose, and you set up your monitors and your camera.

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Mr Murphy: But you only have two pieces of equipment anyway.

Mr Jackson: You've got two pieces of equipment on a pilot project basis, according to your own deputy, in a meeting that Mr Murphy and I and you had attended.

Mr Winninger: Right. Permanently installed.

Mr Jackson: Unless you can bring to this committee that there are more than two, I think it would be misleading to suggest that it's been installed in courtrooms to allow child witnesses. When you go into the body of the report, there's some very compelling evidence that child witnesses are disproportionately victimized in this province because we only have two.

Mr Winninger: Would you prefer if it said "some courtrooms"?

Mr Jackson: No. Let's separate screens from closed-circuit. On a pilot project basis, two closed-circuit televisions have been installed in courtrooms, or closed-circuit televisions have been installed in two courtrooms in Ontario to allow child victims and witnesses to have interviews. Later on, we recommend that this project be expanded. That's all I'm saying, and that's a fact. If you want to say there's a screen program where we can separate the child physically from their assailant, lots of screens exist in lots of courtrooms. But it would be misleading to suggest more than two courtrooms have it, especially when we're recommending—

Mr Winninger: I don't think it would be. It doesn't say "all courtrooms." It doesn't even say "some courtrooms." It says "courtrooms." I don't think it's misleading at all, because the fact is that televisions and screens have been installed in courtrooms.

Mr Murphy: He can almost say it with a straight face.

Mr Jackson: I'm not disagreeing with you. In the interest of not misleading the public with this report and being consistent with the recommendation that we need more of them, we should tell it the way it is.

Mr Winninger: I don't think anyone's going to be misled by this. The evidence was that—

Mr Murphy: Do you want to put a bracket in there that says "which have occasionally been borrowed by other courtrooms"?

Mr Jackson: No. I don't think that's the point. The point is that depending on which jurisdiction you are in as a child sexual assault victim, you will be served better by virtue of this equipment. Now, if you're not going to recommend that later in the report, share that with the committee, and then it's academic if we're not going to provide this service to kids. We're explaining that we only have two courtrooms that have it now.

Mr Winninger: But there's a difference between talking about installing permanently and actually bringing in equipment to use for a particular trial, as they did in London. I suppose you could say they installed the equipment for the purpose of that trial, which lasted many days. Similarly, I imagine, they do that in other jurisdictions.

Mr Jackson: First of all, you'd better get up to speed on this, because one of the courtrooms it's in is in London. That's my understanding.

Mr Winninger: One of the courtrooms it's in is in London?

Mr Jackson: That's correct.

Mr Winninger: Okay, because the evidence was that they had a set in Ottawa.

Mr Jackson: No.

Mr Winninger: What happened was that when the child witness project came and gave evidence, they said, "Isn't it too bad that we have to rent this equipment or borrow it to use in London?" We can go back and look at the evidence that was given, but it wasn't my understanding that it's been permanently installed in London.

Mr Murphy: The bottom line is that there are only two. Regardless of where they are, my understanding is that only two are permanently installed, that we had some evidence they had to borrow it for a trial where they thought it would be most useful to have, but that there isn't permanent access to it. I'm wondering if wording that says two courtrooms have permanent access to closed-circuit television, or some adjective like "permanent" around the access or installation, could serve the purpose of implying, at least, that other courtrooms can occasionally have access by virtue of renting or borrowing, but that only two have it on a permanent basis.

Mr Winninger: We're not trying to hide anything here, but if we're going to change the language—

Mr Jackson: You're being really defensive, David. The government won't fall on this.

Mr Winninger: —let's be clear in the way we change it, okay? If you're saying it's misleading because it appears that we have equipment installed permanently in all our courtrooms, and you want to change it to say that equipment is installed in two courtrooms—and maybe we can verify where they are—and that other courtrooms are required to borrow the equipment for the purposes of their child abuse or sexual abuse trials, that seems a fair way of stating it.

The Chair: I should point out for clarity that on pages 20 and 21, it only speaks of Ottawa as being the city. "In Ottawa, closed-circuit television has been provided to allow children to testify outside a courtroom." So with respect to how many there are and wherever they are, that is the only mention we have of where closed-circuit equipment is currently located.

Third paragraph on page 20, end of the paragraph.

Mr Winninger: Right, so Ottawa I know about.

Mr Murphy: Did they not have TVs, though, for use at the special child court at old city hall? I'm wondering where the other, the second courtroom—

Mr Winninger: I think that's where the other one is.

Mr Murphy: Yes. That's why I think there might be two, one in Toronto at old city hall and the one in Ottawa. But you've sent someone to check that, have you, David?

Mr Winninger: We're checking on that.

Mr Jackson: Mr Chairman, I was on page 20 when you brought it to our attention, because I wanted to check it.

The other point is that George Thomson—my notes to me indicate I said, "This is permanent funding." He said, "No, we've extended the pilot funding a further year." Now, he made that clarification in front of all of us.

Mr Winninger: Are you talking about the child witness project?

Mr Jackson: Yes.

Mr Winninger: It's permanent funding. We announced that last year; permanent funding, not just extending it. When George Thomson spoke, I forget if it was before or after that announcement was made.

Mr Jackson: After the announcement.

Mr Winninger: But it's definitely permanent funding, because I made that announcement myself in London. I know something about it.

Mr Jackson: Okay. I still rest my case that two courtrooms have them, out of the dozens and dozens of courtrooms in this province. We're recommending later that we expand it, so we should be clear at the front, that's all. In the interests of time, I think we should just amend it accordingly and move on.

Mr Winninger: If we deal with it later in some detail, what are you worried about at the beginning? How do you amend it accordingly without restating what's already said further on, on page 21, as our Chair pointed out?

Mr Jackson: I'm only suggesting that we add the words "in two courtrooms," that's all, which is accurate, and it's not inconsistent. That's a fact; that's what's stated later in the report. But one gets the impression, how many courtrooms? With the pilot project basis, I'll accept your statement—

Mr Winninger: By saying "in two courtrooms," you're not recognizing the other trials that have already taken place where they borrowed the equipment, installed it and had trials using closed-circuit TV.

Mr Jackson: I'm agreeing that at any one time in Ontario you can only find these in two courtrooms, that's all. That's what we say later on page 20, and I sure wouldn't want people to think that this—if this is what you're showing as a hallmark of your government's commitment, then why are we recommending that we'd better get on and fund it? I think we'd better call it the way it is so that we can further on say it needs help.

Mr Winninger: I'll tell you what. Hopefully, before we conclude this afternoon, I'll find out how often it's been used and where and whether they have capacity to have it in more than two courtrooms, and then we can be very precise about how we express this.

The Chair: If that's all right with all the members, we'll stand it down. Agreed. Anything else on that page?

Mr Jackson: Just in the interest of form, Compensation for Victims of Crime Act, if we could just put the year 1980 or whatever it was. Andrew can look that up.

The Chair: Sorry. Where are you?

Mr Jackson: It's just that if people want to track the act—this is the third paragraph—under the Compensation for Victims of Crime Act, then it has a date on when it was proclaimed. Just a minor item.

In the next paragraph we talk about the advisory board's report. I think it might be helpful, since they may want to pull it out of the legislative library or their local library, to name the report: Victims of Crime in Ontario: A Vision for the 1990s, released in June 1991. It just would be helpful, if I could make that recommendation.

The Chair: Okay.

Mr Jackson: It contained 13—I'm just finishing that paragraph—"important recommendations," and then what may not be accepted, "To date, neither the government of Ontario nor the Attorney General have publicly responded to this report."

Mr Winninger: Are you asking that something be added?

Mr Jackson: That's what the process of this is all about.

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Mr Winninger: No. You just said "to date." Where are these words coming from?

Mr Jackson: After "access to victim services," I wanted to indicate that there's no response to that report.

Mr Winninger: Where were you wanting to put that?

Mr Jackson: At the bottom of page 3, once we name the report. Thirteen recommendations came out in June 1991. "To date, neither the government of Ontario nor the Attorney General have publicly responded to this report."

Mr Winninger: You have this report that our researcher obtained.

The Chair: Yes. Everybody does, Mr Winninger.

Mr Winninger: Right. So why would you say something, having read the report, where it goes on for pages to indicate how the Attorney General and the Ontario government have responded to many of the recommendations in that report?

Mr Jackson: What I'm saying is when the government commissions a report, it reports to the government of the day. The government then is in a position to publicly respond to it or not. When people are looking at documents that are date-specific, they want to know if there was ever any public response to those.

Mr Winninger: Well, look at—

Mr Jackson: You asked me a question; let me finish the concept. Partially, this comes from doing a lot of educational reports, because the government has a greater penchant for responding to education reports. It's customary to indicate that there was an official response from the government when it commissions its own report. The Fair Tax Commission was a huge investment of money. Where's the response from the government?

The government can choose not to respond, but instead of sending a researcher on a wild goose chase to look to see if there was a response, which is separate from "The government has begun implementing recommendations"—that's a separate point, but at no point did the government publicly respond to the report. I didn't know

that until I talked to one or two of the people who were on the commission. Because they tabled the report, they were hopeful of some sort of official response. It dealt with a whole lot of areas which the government is implementing, a little of this and a little of that, and saying, "None of this," or "Some of that." That's separate from the government announcing a response to a report.

SARC was another example. The government made an official response to SARC. That's all I wanted to do here.

Mr Winninger: Look then at the top of page 5, where it states quite clearly:

"The government has implemented, or has undertaken publicly"—that was the word you used—"to implement, all the measures listed above despite unprecedented financial constraints and despite a full and busy legislative agenda. These commitments reflect its assessment of victims' most important needs and interests and of the most effective ways of addressing them."

Mr Jackson: I'm sorry, where are you reading this?

Mr Winninger: The top of page 5 of the Ministry of the Attorney General, criminal—oh, sorry. Just a second now.

Mr Jackson: You're directing me to something else here.

Mr Winninger: You're talking about victims—

Mr Jackson: What is the first line at the top of the page? "The Ontario government has prepared no formal response to the report of the advisory committee. It has, however, taken steps that implement..." That's all I was saying. Now you want to get into what you've brought in. Great. I'm just simply saying that the government has made no public statement about this report of that date. That's all.

Mr Winninger: Why is that necessary to say?

Mr Jackson: It's necessary for people who are doing research from this document and this report. When they can go to the library and get the report, they'll read it. "Now, what did the government say when that was tabled? There was none. Fine. I won't waste my time looking for it. I'll move on to other aspects." That's what we did mostly in our educational reports in the select committee on education when we were writing these reports, because the Minister of Education of the day didn't have much difficulty responding to reports. Or he'd say: "I'm not going to respond. I appreciate it. I'll take it under advisement." That's all.

Mr Winninger: But anyone researching this area would see this tabled as part of the record in these proceedings and would know that the government has publicly undertaken to implement all of the measures. I just don't follow your statement and why it's necessary or why it's even accurate.

Mr Jackson: Considering it took us six and a half months just to get a response from the government about the report, and its opening statement is, "We've never given any formal response," then we can start tearing it apart to determine which ones they did recommend and which they didn't. We don't even have a policy statement that in fact they appreciated the work of the committee. According to Wendy Calder, they never even got a thank you from the government for doing this.

Mr Winninger: This may be an area of compromise. If you want to put in "incorporate" at the bottom of that paragraph on page 1, the three lines that appear at the beginning in their entirety—

The Chair: Again, which report? The bottom of page 1, meaning the other report?

Mr Winninger: First of all, I'm referring to the bottom of page 1 of our draft report.

The Chair: Okay.

Mr Winninger: Sorry, page 3, Mr Jackson has referred to the opening paragraph under the title "Government Programs and Initiatives for Victims." Right? Where it says: "The Ontario government has prepared no formal response to the report of the Advisory Board on Victims' Issues. It has, however, taken steps that implement a number of the recommendations included in the advisory board report."

Mr Jackson: I have no problem with that. That's what I've been saying.

Mr Winninger: That reflects what's in our own response.

Mr Jackson: Do you understand my point? I don't want somebody looking for an official government response, that's all.

Mr Winninger: What you suggested connotes that the government has just ignored the recommendations of the advisory committee and done nothing.

Mr Jackson: The minister has the right to do that.

The Chair: Let's just get a sense of what we're agreeing to. Mr Jackson was suggesting some wording changes in the final sentence of that page 3?

Mr Murphy: The final two sentences.

Mr Jackson: Yes, the two sentences.

The Chair: I'm going over the other stuff that—

Mr Jackson: "The Ontario government" down to "advisory board report."

The Chair: Hold on, Cam. I just want to get his attention.

Mr Winninger, I'm just going to read the changes that Mr Jackson had recommended.

This is the last sentence of page 3. "The advisory board's report," Mr Jackson proposes that we add in the name of the report, "released in June 1991, contained 13 important recommendations." That's one suggestion.

What you both have agreed to is language which you might want to read in again that there is agreement to.

Mr Jackson: Andrew's got it.

The Chair: Andrew, do you have that?

Mr McNaught: Do you want me to quote from the ministry's response?

Mr Winninger: The first three lines.

Mr Jackson: It's two lines.

Mr Murphy: Two sentences.

Mr Jackson: "The Ontario government" is one sentence.

The Chair: Mr Winninger, please read that.

Mr Winninger: It's two and a half lines. "The Ontario government has prepared no formal response to the report of the Advisory Board on Victims' Issues. It has, however, taken steps that implement a number of the recommendations included in the advisory board report."

Mr Jackson: Fine. That's great.

Mr Winninger: I think that reflects a better balance.

The Chair: Page 4.

Mr Jackson: We should delete the words "victim rights" because you can't convey a right unless it's conveyed in legislation or it's protected under the charter, so we're using a word out of turn. "Victim rights" are either constitutionally protected or contained in a bill and nowhere do we have it.

Mr Murphy: No, that's not right. You can have a common-law right to something.

Mr Jackson: All right. I apologize. The point is, "Despite the significant developments in victim rights," the question we have to ask is, where's the significant development in victim rights if victim rights are defined from the victims' bill of rights as opposed to victim services, which I think it's a fair statement to say that despite increasing developments in victim services in recent years, to classify it as a right, I've yet to have it drawn to my attention that a victim in Ontario has that right no matter where they are in Ontario. It's a service, and if you're in Ottawa and you're a child sexual assault victim, you get increased victim services, but if you're in Mississauga or Halton and you're a sexual assault victim, you don't have the same services. So we have to be careful using "rights." It's the only place in the report where "victim rights" is used instead of the words "victim services." It's used to refer to a victims' bill of rights in every other place in the report. So it's again form and consistency.

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The Chair: Mr Murphy, were you speaking to that?

Mr Murphy: I just don't—well, I won't say that. I think the hair is sufficiently well split by Mr Jackson.

Mr Jackson: That means he supports my recommendation.

The Chair: That's very clear.

Mr Winninger: I'm not sure what Mr Jackson is saying. There are rights that exist outside of provincial bills of rights. For example, the amendments to the Criminal Code which allow children to testify behind screens or using closed-circuit television are rights that aren't necessarily in provincial bills of rights. I also said earlier that with the exception of Quebec, and we're carefully monitoring the situation in Quebec, in no other province that has a bill of rights are those rights legally enforceable. So if you're talking about rights—

Mr Jackson: They are in Manitoba and they are in BC, so you are misinformed.

Mr Winninger: Well, we had this discussion at the time that evidence was presented and it appeared that—

Mr Jackson: No. I challenged the minister on one example. For the record, I challenged the minister her flip answer about "largely symbolic," and I used the example

of Quebec. If you wish for me to make a presentation on which bills of rights are symbolic in this country, I will tell you which ones they are, but to suggest that Quebec stands alone is misleading, and that's not what the Attorney General responded to. She responded to my quick interjection of Quebec as an example, and she capitulated. If I had said Manitoba, with its native rights aspect for justice, she would have had to say yes as well.

Mr Winninger: Maybe I could just complete my train of thought here.

Mr Jackson: Well, don't put on the record—

Mr Winninger: No, no. If I can complete my train of thought, my point was that victim rights don't have to be enshrined in a provincial bill of rights to be rights, nor is a provincial bill of rights necessarily a good vehicle in which to enforce these rights. So to suggest that we can't say what's said here, "Despite the significant developments in victim rights," just because we don't have a bill of rights in Ontario is misleading in itself. So I don't see the need to change the report to the extent that you feel it needs to be changed, or at all there.

Mr Jackson: Well, I've made note that it's the only reference to victims' rights outside of the context of a victims' bill of rights, and I think we should be careful not to use the word in an inappropriate placement, because it implies something different in this sentence than it does. If you want to say that there are developments in victims' rights at the federal level and services at the provincial level, that would be more accurate. That would be splitting hairs. But this implies that because we've referenced a whole bunch of federal bills to guide our provinces, without getting into a long and harried explanation of how the Canada Act, the BNA, divided the powers, which allows the federal government to set the parameters and the provinces to implement—I didn't think that was necessary.

If you want to make this more clear, then you could indicate at both the federal and provincial level that "Despite increasing developments" or significant developments "in victim rights and services at the federal and provincial levels in recent years, the committee heard from...." and then the rights, because rights have been conveyed in a framework at the federal level.

Mr Winninger: What about the right under the victims-of-crime legislation to seek compensation from the Criminal Injuries Compensation Board? Is that not a right? But it's a right that's not enshrined in a bill of rights; it's simply in the victims-of-crime act. So it would be entirely misleading to say, well, we have federal rights and we only have provincial services. I think you're splitting hairs in a manner that's going to be in itself misleading.

Mr Jackson: I don't have the time, and neither does the committee, to proceed in this fashion. There are more substantive issues. So if Mr Winninger wants me to capitulate in this regard, I'm more than willing to, in the interests of time. We've got a lot of work ahead of us in this report.

The Chair: Moving on with other matters on this page. Seeing none, page 5.

Mr Murphy: I'm sorry, Mr Chair, I forgot—actually, I hate to do this to you, but back on page 3 there's one thing I had forgotten to ask about. It was following up on a question I think actually Mr Jackson had posed. It says, "A number of initiatives have been taken in crown attorney offices." I can't remember whether it was here or elsewhere, where he had asked what the number of offices was, because some of these, as our discussion pointed out, have not been taken in all of the offices. Some of them have been. I couldn't remember whether it was there or in another place, where it would be appropriate to mention. Maybe Mr Winninger has that information now; I don't know.

Mr McNaught: It arose in the context of the victim-witness assistance program.

Mr Jackson: Yes, page 17.

Mr McNaught: But the actual number of crown offices is 54 in Ontario.

Mr Jackson: So 12 out of 54 crown attorneys offices is where—okay.

Mr Murphy: So later it's more appropriate?

Mr Jackson: It doesn't matter. It's where I'd raise it.

Mr Murphy: It doesn't matter then. Sorry.

The Chair: Page 5. No comments then? Page 6.

Mr Jackson: It strikes me that the second paragraph describes one of the recommendations of the report which has not yet been implemented, according to my research, and then the committee supports the recommendation of the advisory committee, which is unusual. Why don't we make it a recommendation? Why don't we treat it as such and have it highlighted as such?

Mr Winninger: What are you talking about specifically?

Mr Jackson: The second paragraph describes a recommendation contained in the advisory board report. Are you with me?

Mr Winninger: You're talking about provision of information to victims?

Mr Jackson: Right on. Wendy Calder and subsequent inquiries have indicated we just don't have the money to do all this. We'd love to do it but we've got these other things we have to do. What you're now doing in the third paragraph is you're saying, "We recommend that this recommendation be implemented." Why aren't we making it a recommendation? It's a matter of form; that's all I'm saying.

I apologize. I'm over on page 7 and we've got a choice, an (a) or a (b), right, or a 1 or a 2, to make it—

The Chair: Or 1a and 1b.

Mr Jackson: Okay, I'm sorry; I see it now. If I'd flipped the page I'd see we do make it as a recommendation. I wanted to suggest that these matters that were contained in the report have not been implemented. That's all I wanted to indicate in that second paragraph.

Mr Winninger: Assuming, then, that we're moving from page 6 to 7 now, I would comment about the recommendation. If we're not, then I'll wait.

The Chair: Hold on. Mr Jackson, Mr Winninger is ready to speak to page 7, okay?

Mr Winninger: Is page 6 okay?

Mr Jackson: I had indicated that we haven't implemented those matters. We've discussed something; we say that we support the recommendation. We should note that to date, these recommendations have not been implemented. Therefore, we're recommending whatever we recommend, because then I want to get into this issue about the police to provide information.

Mr Winninger: Okay, so we've already said that some of these recommendations have not been implemented, right?

Mr Murphy: Yes, but I think the point is, nothing with respect to the Criminal Injuries Compensation Board arising under the advisory board report has been implemented, I don't believe.

Mr Winninger: No, we can't say that, because we know that some of them have.

Mr Murphy: They've stopped sending out the "Don't contact us for six months" letter.

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Mr Winninger: We have some literature on that.

Mr Jackson: Mr Winninger, in that second paragraph are you aware of any of those items being implemented? Because when we called the board, it indicated that they weren't—"better training of police and other referrals...about the CICB's activities" and "ensuring a wider distribution of application forms." It indicated on budget restraints that they were fighting to get the money just to print up the brochure, which was Ms Calder's comment to this committee.

Mr Winninger: Could I just have a chance to compare this list here to what's been done? I think the expanded community outreach program was something that the chair did touch on during her evidence.

Mr Jackson: She touched on it when she said she didn't have enough money to produce her brochure, let alone her annual report. We're not even going to talk about her annual report here. She said she was waiting for budget approval so she could produce a brochure.

Mr Winninger: She did get money from us to produce her report. In fact, we put an extra \$1.5 million into the pot.

Mr Murphy: For a glossy report.

Mr Jackson: No, no. She indicated she'd like to do it, but she was unable, that most of that money was going into compensation. I sure would hope that of the \$1.5 million most of it didn't go into staff and paper and computers.

Mr Winninger: Could I refer then, Chair and members of the committee, to page 4 of the document, which we were looking at earlier, that is entitled "Government Programs and Initiatives for Victims and the Report of the Advisory Board on Victims' Issues," halfway down, where it says, "Recently, the CICB has..." Do you have that? If we run through the list, we'll see a couple of the initiatives mentioned on page 6 of our draft report reflected there; for example, the third bullet point, "Implemented the recommendations of a 1992 operational review,...streamlining...processes and procedures,...enhanced and upgraded its existing computerized case management system."

Mr Jackson: Right. What does that have to do with outreach?

Mr Winninger: The next bullet point is, "Established a new client services unit and undertaking to develop a user evaluation feedback strategy."

Mr Jackson: Yes, that's getting feedback. How does this increase access?

Mr Winninger: Up above is "review its telecommunications arrangements, in order to provide better telephone service to applicants."

Mr Jackson: So they've fixed the one receptionist.

Mr Winninger: I think we have to be very cautious here about saying that there has been no action to implement these recommendations, because it's right there in black and white.

Mr Jackson: I don't know why you're defending these people, because you're not responsible. They're an independent group.

Mr Winninger: Yes. But aside from that, I'm looking at what's been implemented and what hasn't. I think it's fair to say—

Mr Jackson: This is all internal administration.

Mr Winninger: —some things have not been implemented. I think that if you want to change the language here, we have to be very particular about how we do it, because some things have been implemented and some haven't. That's all I'm saying. We have a list here of things that the CICB has done. If you want to put that in and then have a separate list of things they haven't done, fine, but it's going to make the report a lot longer.

Mr Jackson: We're not recommending their internal operations be fixed; we're recommending their external operations. That is a report, by definition, of an external process, that's all, and why we want to get into it. I don't think this committee wants to get into how it's run internally. Basically, she admitted under testimony that she had a problem with outreach. She was trying to get a handle on her internal administration because of the huge increase of numbers of people applying, that's all.

If the advisory committee on victims' issues got into internal problems—I don't think they did; I think they were only concerned with external stuff. This is a report on internal stuff, which is all laudable, and we're delighted that they're getting refocused, but it doesn't square with her own testimony that "We just would like to do more, but we're relying on the current system and, frankly, we're getting enough people applying." I'm paraphrasing what she said.

Mr Winninger: My only point is this: To change it in the way Mr Jackson earlier suggested, to say that none of these recommendations have been implemented, is just not so.

Mr Jackson: Pick any one you want. The only one that comes close here is better training of police and other referral services about their activities. That's the only one that comes close, according to my investigations and according to this document. I read this document

through; I didn't see where—

Mr Winner: Would it help you if I jumped ahead and said that I have no problem with the first recommendation at the top of page 7? Clearly the police are probably the first point of contact for victims, and if, at that initial stage of the investigation, they're provided with a victim information package that's comprehensive and lets them know where the services are and what their rights are and that yes, they really do count in these proceedings, then I think it would be quite beneficial. So if that will short-circuit what you're getting at here, it might be an easy way to do it.

Mr Jackson: Why don't you support the second one?

Mr Winner: Because the Attorney General is at several removes. First of all, the Attorney General doesn't decide what charges are laid—the police do that under our current system—and the Attorney General's time of contact with the victim is long after—sometimes shortly, sometimes long after—the charges are laid. What we heard consistently from some of the witnesses that I think you had a hand in bringing forward was that it's not good enough just to provide victim assistance to people whose offenders have already been charged, that they need a point of contact even earlier than that.

So I think it's entirely appropriate that the police provide this kind of package. The Solicitor General may have different views, but that happens to be my view. I don't know if that helps or hinders you or makes any difference, but I don't have a problem with the recommendation.

Mr Murphy: I have a partial problem with number 1 and I guess ultimately it's this: Under the Police Act, the police have an obligation related to victims, and I think that's clear. My concern is the degree to which this could be read, as it currently stands, as a downloading of responsibility to police which may or may not be paid for out of provincial coffers.

In other words, it's just not clear what we're asking the police to provide in the form of that information package. I think it's important to say that if it's a little brochure with sub-brochures in it that describe, "If you need this, this and this, here's where you call and here's the address," and it's a simple pamphlet produced by the government and all they need to do is have a pile of them in their office and when they go out, they just give them the pamphlet—if it's clear that's what we're trying to do, I have less of a problem with that.

If it's something that has to be developed by the police and accommodated to each situation, I think frankly, to be honest with you, police are going to have more of a difficulty with that because it's another case where you're just adding more tasks, asking them to do more with less money.

If it's a simple thing of reaching over behind them on the desk, getting something from the credenza and passing it across the front counter, that's okay. I think we can live with that. But I think the recommendation should reflect that, if that's what we're having in mind, that it's a pamphlet or pamphlets produced by the provincial government and paid for by the provincial government

that the police just hand it out. Then I think I can support that, and I think the recommendation and its wording should reflect that.

Mr Jackson: I'll be brief. My comments are similar to Mr Murphy's and also in respect that if you read the preceding page, we're basically saying that victims need information. The reference to the police is a suggested transmitter of the information. We're concerned about who develops it, who pays for it and who changes and is responsible for its updating.

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Given that the Attorney General is also responsible for criminal injuries compensation, my view is that recommendation 2, as has been worded by our researcher, is excellent because it sets out all aspects of what we're trying to do. It does mention that the police would be one of several ways of transmitting the information, but I do not want the chiefs of police of Ontario defining what victims' rights exist.

I bring the committee's attention to this point. Scott Newark during the presentation, and Hansard will bear that out, suggested that we look at both the province of Manitoba and the province of BC, which have a comprehensive booklet which lists, by community, the victims' services and victims' numbers. Their victim fine surcharge fund was used to create this directory. It's also produced in Chinese, which is interesting. It is available in a variety of courtrooms, rape crisis centres, interval homes. He was quite impressed because it had five or six pages and it gave—I almost used the word "fulsome" treatment of the availability of these.

I think that's what we want to get closer to. To just simply say the police should hand something to a victim, yes. But I think we've come this far and we should say we want something very comprehensive, developed under the authority of the Attorney General's office, to say: "Here's our commitment and statement about victims' rights. If you're victimized in this community, here's what you can expect and here's who to phone." We really should say who should be responsible for doing it.

The Chair: Before your response, Mr Winner, if I could get all of you to also look at pages 25 and 26, which speak to this as well, so that you bring them together in terms of the kind of recommendation you want to make, because there is a recommendation there on page 26 which very much relates to this, although there's a notation underneath it. I would ask all of you to look at that to see how you would want to fit your comments respectively.

Mr Winner: You must have been reading my mind, Mr Chair. I was just going to allude to what's being done currently in British Columbia with the police-based victim assistance program, and that's outlined in detail here at page 25, plus the rationale that the victim's first contact is usually with the police. It doesn't describe what kind of literature the police in BC actually hand out to the victims, but it's clear here that information is provided and referrals and court orientation and so on and assistance in completing applications. So this seems more interventionist perhaps than just a pamphlet.

I think this is something certainly that we have to be a little cautious about, knowing that the police are already strapped for resources and that they need to use their resources in the best possible way. If indeed it's a pamphlet that they're able to provide victims, it'll still be far better than what the victims described to the committee they're currently receiving, which tends to be piecemeal and ad hoc and not a coordinated effort.

Mr Murphy: I think that's fair enough. I think what we're trying to focus on here, though, in this recommendation on page 7—on page 26 we make reference to the fact that this is quite an expensive system, we say maybe there's some utility in looking at it, it's not a clear "This should be done" recommendation, it's a "This should be studied" recommendation. It's clear that the staffing of that department there has quite a lot to do.

Even if you say—there's an argument that says the police should, in the context, give information to victims about the role in the process they have the most knowledge about, which is the status of an investigation and the court process. Beyond that, the police contact with the victim and services to the victim is less immediate.

However, victims need access to that from the word go. In fact, the status of the court case is initially probably less important, other than, "Did you arrest the person who did it?" to them than counselling or other kinds of issues. So this, on page 7, really deals with making sure that they have, at the earliest stage possible, access to information of that kind and in fact of all kinds.

If you want to know, "Is the person arrested?" or "When does it come to trial?" then this is who you ask. If you want to know, "How do I get compensation?" this is who you ask; if you want to know, "How can I get counselling and assistance?" or "If it's my child who has been victimized, what can I do to help?" you've got to provide the person with a source about where to look. I think it's a bit much to ask the police to be the source of that information and, as Mr Jackson said, the people who maintain it. But it makes sense to a certain extent for them to be the conduit because they're the initial contact, as the argument is made later on in the report and I think here.

I sort of get the sense we're talking all in the same direction. Your point about whether the AG's office should be the body that actually gives it to them might be appropriate. So there may be just a tiny wording amendment in recommendation 1a that would reflect that it's produced by the Attorney General's office, that it's their responsibility to maintain and update that pamphlet, just where do you go, but that it's the police that can have access to give it out or at least should be one of the places where it's appropriate to give out.

Then when you get to page 25, when you look at the range of things you ask the police to do, that's quite a bit more than just, "Here's a pamphlet." We have some things in the rest of the report that talk to some of those services and who should provide them. At this point it's really just that you have been victimized by crime: "I don't know anything. Where do I start?" That's really what this goes to. I think if we can take 1a and modify it slightly to make it clear that the police give them the information package prepared and paid for by the Minis-

try of the Attorney General, we're all singing out of the same hymn book.

Mr Winninger: I wouldn't be singing from the same hymn book, because I was actually suggesting 1 as opposed to 1a. I think we need to look again at page 26 and look at the language that's used in recommendation 16, "That the government examine the feasibility of establishing a police-based victim assistance program in Ontario, similar to the existing program in British Columbia," which might include the development of a comprehensive victim information package. But certainly I have some difficulty, since I don't believe we heard from the Solicitor General or the police directly on this issue, in being just too hard and fast on this particular recommendation. That's why the language in the later recommendation appeals more to me.

Mr Murphy: I have to say, if I can, that I was doing some recent review of heraldry, and in the Winninger family coat of arms it says in Latin, and I'll agree, "Leave no nit unpicked."

Ms Christel Haeck (St Catharines-Brock): Can you write it in Latin?

Mr Murphy: No.

The Chair: You'd make a good lawyer, Mr Winninger; that's what I think he's saying.

Mr Jackson: When I listen to him, all I can think of is the nap.

The Chair: Were you going to respond to this?

Mr Jackson: I was just simply going to say that I thought we were in a section titled "Information About Victim Services and Compensation." The report, ably written to that point, states that when a victim's advisory group met to discuss it they felt that the information wasn't always forthcoming.

Our recommendation should state simply that some sort of comprehensive amalgam be put together by the Attorney General's office, because some ministry has to take responsibility for it. I can't support something that just leaves it out there in mid-air to be done. I think we should assign it to a ministry, and then if you want to state that the police implement it, fine.

My treatment is, don't even mention the police here; move to the recommendation that's been referred to by both you and Mr Murphy, Mr Winninger, where it refers back to "recommendation," if this is recommendation 1, that the police assist with the dissemination of this information.

1700

Again, I don't know why we deviate too far with the recommendation when it was "Information About Victim Services and Compensation." Nowhere is there something other than a basic little, wee pamphlet that CICB puts out. We're saying, based on deputation and the recommendations from the advisory board, that it should be more comprehensive. That's all.

You may want to pare down 1a, but I can't support 1 because it simply just offloads to the police departments something we haven't really described, and who is going to pay for it and who's going to develop it?

Mr Winninger: If you go back and look at the report of the advisory committee and the recommendations in particular which start at page 7 of that report, I think you'll find—and I just glanced again quickly through it—that the advisory committee doesn't call upon an assigned task to particular ministries. It talks about the government's responsibilities on the first page, and as we move through the recommendations, there's no reference that I can see to specific ministries.

If the recommendation were to say that the government should examine the feasibility of developing a comprehensive victim information package, that would seem quite reasonable, from my point of view, as opposed to saying the Attorney General must do it or the Solicitor General must do it or the women's directorate must do it or the police must do it. I think that would be a decision that would have to be taken by the government of the day.

Mr Jackson: What do you think we're doing here? We're recommending to the government of the day. Now, they can cast it aside. If you are going to act in the shoes of the government, we don't need to waste much more time with this report. What we were supposed to do was simply take recommendations—to discuss the feasibility of whether or not we need an information system and who should disseminate it? Give me a break.

Mr Winninger: No, no.

Mr Jackson: Most provinces have it, Mr Winninger. The victims came forward and said: "It doesn't exist. Would you please get it for us." I think if you ask the minister privately and quietly in the halls, she'd say, "Of course, it's a great idea." Now, is it that she's planning to do one and you don't want it in the report so she can announce it?

Come on. This makes so much sense and we're not running up a huge expense here. We're simply saying to take Wendy Calder's little, wee pamphlet and make it a little bit bigger and a little bit better and get it done professionally and then we'll ask our police to disseminate it. What is the big problem here?

Mr Winninger: Fine. If you don't like the word "feasibility" there, strike the word "feasibility," but I'm saying it's not fair to call upon one particular ministry in this report when the advisory committee itself did not identify specific ministries. I agree it's a good thing to have a comprehensive victim information package. Who would quarrel with that? I agree that we—

Mr Jackson: Good. That's a start. Now, who do you think should develop that? Who do you think should develop that, based on the deputations?

Mr Winninger: If you want to call upon the government to do that, that seems, as I said earlier, quite reasonable.

Mr Jackson: We're making progress. Do you have an opinion on a ministry that would be appropriate?

Mr Winninger: My opinion on a ministry that might be appropriate isn't that relevant to the recommendation that's being made.

Mr Jackson: This is Andrew McNaught's recommendation based on what he heard. It's up to this as a

committee to refine this and give it focus and direction. My Lord, what is the problem here? Wait till we get to the heavy meat and potatoes stuff. All this is—could we please—

Mr Winninger: He's given us a menu of options, and I said my preference is for option 1.

Mr Jackson: I don't argue with my kids; I'm not going to argue with you. This is absurd. This is just absolutely absurd. I'm not going to recommend sticking the police with a document and we haven't told who's going to develop it, who's going to pay for it and what's in it.

Mr Winninger: Then why will you stick somebody else with it?

Mr Jackson: By your own words, it would be irresponsible to do that to the police. Now, that's your recommendation.

Mr Winninger: Then take out "police departments."

Mr Jackson: That's what I said 10 minutes ago.

The Chair: So, Mr Jackson, what are you recommending then, as part of—

Mr Jackson: I'd like to know what's wrong with number 2, other than the fact that it suggests that one ministry consider it.

Mr Winninger: What's wrong with number 1 if you take out reference to police departments?

Mr Jackson: Because it says nothing: a comprehensive victims' package be developed—by whom?

Mr Winninger: It doesn't say—

Mr Jackson: I think the Attorney General is the spokesperson for justice issues in this province. I would not take that away from your justice minister or any future justice minister, point number one. Point number two, the expertise is within that ministry. I would not want 14 people on a committee trying to develop this. I think the minister has the capable staff in order to do it.

Now, if it's a funding issue, peel it off. But developing a pamphlet and printing it are two different issues. Develop it and let the police commissions pay for it, but say that. That's all I'm saying.

The Chair: Mr Winninger, just your final word, and then I think we'll—

Mr Winninger: Yes, my final word. Why don't you adopt this suggestion: We take the phraseology of number 1 and we say, "That a comprehensive victim information package, which would include information"—and so on—"be provided to victims of violent crime and their families." You just delete the reference to "by police departments." That we'll give the government some discretion as to how that should be prepared, published and distributed.

The Chair: Clearly, that's not enough for Mr Jackson, because he wants to say "police departments" but he also wants to say, "be provided by the Ministry of the Attorney General to victims of violent crime."

Mr Jackson: I'm simply reading what the victims told us to do. I think that was a given, and it was a given to the advisory group, who also said it. The advisory

group said there should be a 1-800 number, which is the last part of 1a, "In addition, the police should provide victims with a telephone number to call the ministry," the Attorney General, the 1-800 number that's referred to on page 6, which you seem to feel is getting implemented, and it isn't.

I'm sorry. Why can't we agree on specific language as to what we're doing? If you don't feel that anybody should be responsible for funding it, then fine, say it, and we can get on to the next point. But I can't just say, "Do a report," and then someone's going to say, "Who the hell's going to pay for it?" I can't say, because nobody around this committee discussed it.

I can tell you what my view is. I think the Attorney General's the expert in this province and no one should take it away from them. If you want to separate it and make it a funding issue, do that.

The Chair: Mr Jackson, I think everybody understands there is no agreement, quite clearly. So—

Mr Jackson: So what? There's no recommendation, Mr Chairman?

The Chair: So we have to decide what people are going to move in this committee, given that there's no consensus, and then we'll just go with that.

Mr Jackson: Mr Winninger's position is that the Attorney General's office is not the appropriate ministry to be developing a comprehensive victims' package.

Mr Winninger: No, I didn't say that—

Mr Jackson: Well, then, tell me.

Mr Winninger: —and please don't misquote me. I said that you can achieve your purpose—

Mr Jackson: You don't know.

The Chair: All right, Mr Jackson, it's not yes. Can I just ask you, Mr Winninger, perhaps you might want to propose a motion, then, in terms of the particular motion you want and then move that, if that's what you want to do.

Mr Jackson: Mr Chair, for the purposes of discussion, let me move 1a, and then that's the motion that's on the floor. I have the right to do that.

The Chair: All right, Mr Jackson's moving 1a.

Mr Jackson: If Mr Winninger wants to amend—

The Chair: Discussion? Mr Jackson has moved 1a.

Mr Winninger: As is.

The Chair: That's right.

Mr Jackson: Yes.

The Chair: Any discussion on that? All right. All in favour? Opposed? That's defeated. Mr Winninger?

Mr Jackson: Mr Chairman, did we actually vote?

The Chair: I'll call the question again. All in favour of Mr Jackson's motion?

Ms Haeck: For 1a?

The Chair: For 1a. He's just—

Mr Jackson: Yes.

The Chair: Mr Jackson has moved 1a, right?

Ms Haeck: Oh, I'm sorry—

The Chair: And he didn't see hands going up is what I think he's saying. Mr Jackson, we're going to vote on this then, is that it?

Mr Jackson: Ms Haeck voted with me, and then—I don't want to name members.

Ms Haeck: No, no, and I have no problem in saying very publicly I misread that. I was thinking of 1, the first one on the page. I'm used to sort of numbering this a little differently, so I have voted on the wrong one.

The Chair: I see.

Ms Haeck: So, my mistake.

The Chair: I hadn't seen that. Mr Jackson, is that all right then? Do you want to have a revote, or is that quite clear? I didn't see what you were getting at, actually.

1710

Mr Jackson: I think I assisted the Chair, since the member's admitted her vote was counted incorrectly and this is an opportunity. Please just—

Mr Winninger: Just for clarification, I'm not sure what the aftermath of that exchange was.

The Chair: I thought the motion had been defeated. Mr Jackson corrected the whole situation because I hadn't seen Ms Haeck's hand go up in support of 1a. Then she clarified when I was about to take the vote again, because I had not seen that, what she was doing. So 1a is defeated, is what I'm saying. What I would ask you to do is, it's either 1, 1a, 1b. Recommendation 1a has been proposed and it's been defeated. Perhaps you might have another motion that may be different than what is there.

Mr Winninger: I would move 1 with the deletion of the words "by police departments."

The Chair: Discussion?

Mr Jackson: Could I ask Mr Winninger who would develop this package, in his mind?

Mr Winninger: That's not a question that I can answer.

Mr Jackson: After listening to all the deputants, and the ones with specific recommendations, you have no opinion?

Mr Winninger: No. I heard many deputants say that it would be really beneficial to have a victims' information package. Quite frankly, I can't recall whether any of them said who should prepare it. Maybe Mr McNaught recalls, but I can't recall anyone saying who should prepare it.

Mr Jackson: Do you have any opinion as to who should produce—in other words, print—this report?

Mr Winninger: The ministries. It may be more than one ministry. Frequently, more than one ministry collaborate in the preparation of a response.

Mr Jackson: One ministry wouldn't do red ink and another ministry do the blue ink and then leave the colour to Citizenship, for example.

Mr Winninger: Sure, but just for example, when we extended the funding for the child witness projects, three ministries contributed funding to that. Now I believe it's just the Attorney General who's funding those projects on a permanent basis.

Mr Jackson: You have no opinion as to who might pay for this?

Mr Winninger: I don't have an opinion, nor do I think if I did it would really be that relevant to this particular recommendation.

Mr Jackson: Who do you think should distribute this victims' package?

Mr Winninger: I suggested earlier, and it's suggested later in the report, that because the police are generally the initial point of contact with victims of crime, it would be entirely appropriate for the police to distribute that information. Whether it's information they themselves prepare or another ministry prepares remains to be seen.

Mr Jackson: Do you support the concept of a 1-800 number as recommended by the committee prior to this recommendation? On page 6 it's, "We support the recommendation of the advisory board." So you support the use of the 1-800 number?

Mr Winninger: I think that would be a good idea.

Mr Jackson: Do you support the 1-800 number for the Attorney General's office?

Mr Winninger: Where's that here?

Mr Jackson: We're dealing with information about the police, information about the courts and information about compensation. All three are contained in the concept of a comprehensive victims' information package. We have a 1-800 number we're recommending for CICB. Are we recommending a 1-800 number for SolGen so that we can get answers to the police and a 1-800 for the Attorney General for matters to do with the court, to be consistent?

Mr Winninger: The 1-800 number for victims' services information seems entirely appropriate for us to be recommending as a committee.

Mr Jackson: That gets me back to my point that we still don't specifically say that—Mr Winninger's number one recommendation deals with a comprehensive victim information package that deals with victim support services and the right to compensation. We do not specifically make a recommendation that recommendation whatever number—let's say it's number 6—of the advisory board report should be implemented. We say it in a narrative on six, but we don't make it a specific recommendation, and they're two separate issues.

The Chair: Mr Winninger, do you want to incorporate anything into your motion?

Mr Jackson: Or make it two recommendations.

The Chair: Certainly for the record, everything should be noted when it happens.

Mr Winninger: I don't have a motion on the 1-800 number. In the report itself is reflected the advisory board's recommendation about the 1-800 number. Clearly that might be part of a comprehensive victim information package, which also ties in with what's described on pages 25 and 26 that you alerted our attention to. I don't think we need a specific recommendation in our report simply parroting what's already in the advisory committee report. So I make no motion on that. I was simply responding to Mr Jackson's question.

The Chair: Very well. Then I think we're ready for the question. All in favour of Mr Winninger's motion?

Mr Winninger: Which motion?

The Chair: The motion which you've made, recommendation 1, and also deleting "by police departments." All in favour? Opposed. That motion on page 7 carries. Anything further on that page?

Mr Jackson: Then I propose a motion. Andrew's just provided me with a copy of the report so I can pull out the advisory "Accessibility of Victims' Services" recommendation, recommendation 8. Instead of the third paragraph on page 6, to make it as a matter of right, I think we should put that in the form of a recommendation, since we recommend that something be implemented. We've named the report; we can now refer to it. Recommendation 8.

The Chair: Mr Jackson, I'm sorry. You moved something, but I'm not quite clear.

Mr Jackson: I'm moving that instead of our committee making this statement in the third paragraph on page 6, it be placed as a recommendation and that this recommendation indicate the committee's support for recommendation 8, "Accessibility of Victims' Services," from the advisory committee report.

The Chair: That's Mr Jackson's motion. Any discussion on that?

Mr Winninger: I need some clarification. Could I hear again what it is you're proposing to change and the language you're going to use to change it in what's before us on page 6?

Mr Jackson: Page 6, in the second paragraph—

The Chair: The third.

Mr Jackson: The second paragraph. He's asking me what I propose to change on page 6. Oh, okay, the third paragraph states that we recommend something. It's a recommendation. I want it put as a form of a recommendation, not for it to be a simple sentence. It should stand alone as a recommendation of this committee, if we believe that. If we don't, then let's take it out.

What we're saying we recommend is everything that preceded that up to that point, which is contained in the second paragraph. That is a listing of items, most of which are contained in recommendation 8. It talks about "Outreach in areas such as culture, language, literacy skills"; it talks about "Coordination of information with other sources"; improving "public awareness and accessibility" to the CICB; implementing a 1-800 number; "update and simplify application forms and ensure wider distribution to the community, to shelters, to victim/witness assistance programs," to a variety of sources; and then it says "train referral sources such as police" etc.

1720

If we say we support the things listed that haven't been implemented, we should put it in the form of a recommendation. I was trying to incorporate that in your 1. We didn't do that. You just picked one small aspect of recommendation 8 of the report and put it in there, but we do say we support the recommendations of the advisory board.

We've got to be very careful, because that should be corrected. It indicates "the recommendations," which is the plural, which means it's more than recommendation 8. I know the government doesn't support all the recommendations of the advisory board, so we'd better be careful of what we say there. That was the point I was trying to make earlier, but I thought we might amend it with the 1 or 1a. Now that we're unable to do that, I'd better clarify that in the report, or we should say which recommendations of the report we recommend be implemented.

Do you want time to look at that? Andrew, do you want your copy back? I've liberated it from you.

The Chair: Mr Winninger, if you like, we could stand it down if you want to be able to read it, and move on to other pages.

Mr Winninger: I was just trying to scan the report on progress based on the recommendations of the advisory board. Yes. I think there would be some benefit to standing it down.

The Chair: Mr Jackson, is it helpful to stand it down?

Mr Jackson: Sure. Mr Winninger, you accept that we can't use the line, "The committee supports the recommendations"—plural—"of the advisory board"? We have to be careful with that line.

The Chair: He's asking, as you reflect on all of these things, to remember that.

We were on page 7. Anything further on page 7?

Mr Jackson: No. It looks okay to me.

The Chair: Page 8?

Mr Jackson: I briefly made reference to this to Andrew because it required some additional writing, but nowhere do we mention in here, under the Criminal Injuries Compensation Board—if we're going to give it its brief discussion, we should indicate that its unique feature is a subrogation of rights under the law; in other words, its ability. I think Andrew was working on some wording.

There is a statute of limitations on CICB, and I think in fairness we should indicate that, otherwise someone would read this and think, "Well, hell, I can apply any time," but one of the major complaints was, "My time ran out." Several deputants indicated that they talked to families this had happened to because they didn't know about it. The next bad news was, "You should have applied within the three-year time limit."

Mr McNaught: Section 6 of the Compensation for Victims of Crime Act provides a one-year limitation period for making applications. If you want a reference to that, I can include that. The other issue was the subrogation rights, and your question there was whether the victim gives up the right to sue the criminal if the victim makes an application and receives compensation from the board.

My reading of section 26 is that the victim would give up the right to sue, although I'm told by the minister that there might be a couple of exceptions to that rule, and I'm waiting to hear back from them on that. But as

written, it appears that the victims would give up the right to sue.

Mr Jackson: Since we were charged with the responsibility of looking at the CICB, which was our original mandate, one of the recommendations I want to make is that the one-year limitation be reviewed, and if you look at the advisory committee report, they felt a one-year time line should be reviewed. Now, do I know what I'd like it to be? If I guessed a number off the top of my head, I'd say two years' additional time. When we hear from out of the mouth of the chair of the board that there are over one-year delays for some of these people, it strikes me that the system could embrace a two-year waiting period. I realize this has implications for Askov, but since the CICB is only collecting a minor fraction of these awards back from the criminals, I don't think that's a matter of major concern to the board.

I wanted to pause and make a recommendation that we change the one-year limitation, and I wanted to make sure the subrogated rights were understood. I think the board would be better served if it gave larger awards under certain circumstances and went after the criminals involved.

The Chair: Do you want to move them as motions?

Mr Jackson: I'd like to get consensus that the report would be strengthened by adding that information, simply as information. That's not putting a value on it or taking it anywhere. That's the first point, and Andrew will come with concise language or information, which he can refine himself.

The Chair: All right. Comments on that?

Mr Winninger: It may be useful to remind the reader of what the limitation period is by using language taken right from the act, because there are cases where people apply to enlarge limitation periods based on the charter or based on other reasons. Sometimes they're successful; sometimes they're not. We can't really get into that in the scope of this report.

Mr Jackson: Yes, we can just say what the act says.

Mr Winninger: It's very difficult for us to replace a lawyer, in some respects, when you're dealing with limitation periods, because sometimes they are in fact set aside or enlarged, based on the circumstance of the case. Judges do have that discretion, although they use it quite sparingly.

Mr Jackson: People aren't calling their lawyer and suing the CICB.

Mr Winninger: No. I'm talking about the limitation period to bring your application for compensation.

Mr Jackson: That's in the act.

Mr Winninger: Right. Maybe Andrew could remind us what the wording of that section says, if you have it with you, because I believe there is some discretion within the Criminal Injuries Compensation Board to allow an increased amount of time.

Mr McNaught: Section 6 reads: "An application for compensation shall be made within one year after the date of the injury or death, but the board, before or after the expiry of the one-year period, may extend the time

for such further period as it considers warranted.”

Mr Winninger: We need to reflect the language, I think, in the report.

Mr Jackson: I don't see anything wrong with the actual wording.

Mr Winninger: Nor do I.

Mr Jackson: So I guess there's consensus on that? Great.

Can we do a similar treatment, Madam Chair, with respect to informing the public in this report that suing an offender in civil court for damages resulting from commission of a crime has also been ineffective, since most are not in a position to satisfy judgements against them?

The comment that was made by Wendy Calder was that our average payout is under \$1,000, so why would somebody hire a lawyer to spend a day in court and pay the legal fees—in other words, why would even the Criminal Injuries Compensation Board waste money chasing that small amount of money? That's really one of the issues there. It's too offhanded to say that all criminals are poor, because we're talking about violent crime. All poor people aren't violent: Violent crime cuts across all income groups and all individuals in society. That's not the reason we have such a low recovery.

It's because our awards are low and therefore it makes no sense to send a lawyer, at his hourly rate, to sit in a courtroom to get even 50% of your case if it's won. It's not paying for itself. I had order paper questions going back to Ian Scott's days to corroborate that. We should be careful how we treat that. The level of the awards was also a contributing factor in the board's inability to seek, civilly, compensation from the criminals. That's defensible. Even I agree with that.

1730

As to the subrogation of their rights, I indicate it's similar to the WCB, where you give up your right to sue in most cases in order to get the compensation. It's the same principle in law which was applied in the infrastructure of this legislation, and we're silent on that. Somehow we've got to get across that “suing an offender in civil court for damages resulting from the commission of a crime”—we should let them know that that's what the legislation says, but it says the victim subrogates that right to the CICB and the CICB has the right to go and claim that money.

When I asked Wendy about that, she indicated her subrogated rights income was extremely low, like \$79,000 on a \$12-million payout.

The Acting Chair (Ms Zanana L. Akande): You would ask for a similar treatment, similar to the one you'd just previously used. Is that agreeable, Mr Winninger?

Mr Winninger: One of the problems I have at this stage is that we were doing this page by page, and now it appears we've jumped around within that next section. First of all, we discussed the benefit of having a paragraph that would deal with the limitation period, just to alert people.

Mr Jackson: We got agreement on that.

Mr Winninger: Then we were talking about benefit levels, and recovery, subrogation. If we could stick to the page in the text, it would be a little easier for me to know exactly what changes are being recommended.

The Acting Chair: We are currently on page 8. We had moved to that after your previous discussion. Is that not where you are?

Mr Jackson: Yes, the second paragraph, “Suing an offender in civil court.” My difficulty here is that we are discussing the general area of restitution orders and civil litigation for victims, in a general way. We're not tying it to criminal injuries compensation. It's a parallel comment.

What we've failed to do is indicate that civil litigation is a part of the CICB process, but you subrogate that right to the board. Now the board's in a position to sue. If I wanted to be mischievous, I would show a schedule that shows that Ontario has the lowest recovery rate in all of Canada, which is a fact, on these civil litigation recoveries.

What we've got here, in my view, is rather inappropriate language that basically all violent offenders in Ontario are poor, and I don't think that's right. That's not the reason people don't sue.

If you want to go to criminal injuries compensation to get your funeral expenses paid, the first thing you sign on that report, if you're familiar with it, is: “I give up my right to sue this person because I'm going to go to you, the state, and ask you for it. What I'm giving you is, you now have the right as the state to go sue this person.” I'm not going to get into whether I think the CICB's done a terrible job not suing people. I'll leave that alone. We can't just leave that people don't sue because all violent criminals are poor people, because that's false and misleading. It is a subrogated right which you give up, and that's the first thing you're asked to do.

Can Mrs Mahaffy sue Mr Bernardo? The answer is no, because she's already signed a document saying, “If you give me a pittance of \$800 to bury my daughter, you can go and sue Mr Bernardo,” and the Attorney General can direct the CICB to sue Mr Bernardo upon conviction for the moneys they paid out on his behalf. That's the law in Ontario, and nowhere does that describe that scenario.

Mr Winninger: Well, if I may, Madam Chair—

Mr Jackson: And I'll just put a finer point on it. The reason that I want this in here is not only because it's an accurate reflection, but in my victims' bill of rights I incorporated some of the components of the Quebec legislation which allows for parallel civil litigation. In fact, there are some people in the Attorney General's office who have been intrigued by some of the references in my victims' bill of rights which allow for a parallel civil action. If Bernardo's going to make millions of dollars on his book rights, Mrs Mahaffy should have the right to proceed on a parallel civil action. That can occur in the province of Quebec; it can't occur in Ontario.

The Attorney General's saying it's complicated but it's doable. Maybe it shouldn't be contained in the victims' bill of rights, and I might agree with her on that, but the principle in law is such that victims have a minor door

closed to them because they've applied to the Criminal Injuries Compensation Board for a modest amount of money. Somehow we have to allow our court system to be more fair, that the victim can be told: "Look, you may not want to come to the Criminal Injuries Compensation Board because when you get through it all, you might get \$1,000. But based on the nature of your crime, you may want civil litigation." Because, frankly, not all poor people are violent offenders. That's all I'm trying to say.

I don't want to get into who's failed; I'm simply trying to be clear in the report and if I wish to treat it somewhere else, fine. But it's a very important view, and it's not Andrew's fault he didn't deal with it in this detail. He dealt with what came out, but there was a lot of discussion around parallel civil litigation.

Mr Winninger: I'm not sure, Mr Jackson, that you're entirely correct in your approach, and I would defer to Mr McNaught or other legal advice we can get. But I'll tell you what my understanding of the situation is, and that is, anyone who's a victim may apply to the Criminal Injuries Compensation Board.

Mr Jackson: Who fits their criteria.

Mr Winninger: Right. You will recover some modest compensation—

Mr Jackson: Within a scale; that's correct.

Mr Winninger: —compared to what you could do perhaps in a civil court on a bigger scale with a defendant who's not judgement-proof, or even with one who is. You simply get a judgement for x hundreds of thousands of dollars.

The point about the subrogation, as I understand it, is this: If indeed the Criminal Injuries Compensation Board awards compensation for funeral costs, pain and suffering, loss of income, what have you, on a modest scale, then of course the Criminal Injuries Compensation Board is subrogated to those rights to in turn go after the offender and recover up to and including an equal amount.

What's new to me, and I don't necessarily agree with it, although you can correct me if I'm wrong, is that this isn't like the Workers' Compensation Act in that it's not exclusionary. I'd be very interested to hear opposite points of view, because let's say I'm a victim of a crime and I know I can get, well, it may not be funeral costs but pain and suffering, loss of income and so on to pay some of my bills, as the chair of the board put it. But six months after I get my award from the Criminal Injuries Compensation Board, I discover that the offender is out of jail and won a lottery prize of, say, \$100,000. I'm not sure, and correct me if I'm wrong, that there's anything to stop me from going after other heads of damages from the offender now that it makes perfect economic sense to do so. That's where I think there is inherent distinction between this regime, criminal injuries compensation, and workers' compensation, which has a very definite exclusion.

I wonder if Mr McNaught has anything to add on that.

Mr McNaught: Just that I spoke with the ministry this morning and they said that they would get back to me later about some of these exceptions to the general

rule that you give up your right to sue. So I'm waiting to hear on that.

Mr Winninger: When you say you're giving up your general right to sue, is that in the statute?

Mr McNaught: Well, it's a lengthy section.

Mr Winninger: Which section?

Mr McNaught: Section 26.

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Mr Winninger: What does that say?

Mr Murphy: Subsection 26(1) says, "Nothing in this act affects the right of any person to recover from any other person by civil proceedings damages in respect of the injury or death." Then subsection 26(2) deals with subrogation rights.

Mr Winninger: So that first subsection seems to verify what I just said.

Mr Murphy: Subject to subsection 26(2).

Mr Winninger: Which deals with subrogation rights.

Mr Murphy: The subrogation rights.

Mr Winninger: But surely subrogation rights are confined to what the Criminal Injuries Compensation Board awards.

Mr Murphy: Subsection 26(2) says, "The board is subrogated to all the rights of the person to whom payment is made under this act to recover damages by civil proceedings in respect of the injury or death and may maintain an action in the name of such person against any person against whom such action lies, and any amount recovered by the board...."—I think, as you say, it applies to the amount actually paid out by the board.

Mr Winninger: But it would be interesting to have a more definitive answer on that. I think it's rather complicated, and that's why I was hedging a bit on that. But you have those two sections, each of which suggests something contrary. There may be some case law on that which would indicate what's been held in decisions that deal with that particular section. I'm sure if the legislative researcher had an opportunity to look in the legislative statute citator, it would have cases listed there that may pertain to that section.

Mr Jackson: I don't know that directing Andrew to do that kind of research—

Mr McNaught: That's why I consulted the ministry, because I wanted to speak to people who deal with this on a daily basis. A plain reading of the section is not going to answer all your questions.

Mr Jackson: I don't think Andrew's the appropriate person to be drafting this section. I think we need a little help. I just do not wish to have in a report that people don't sue violent criminals because they're basically poor and deadbeats. I can't just leave that there when it is a complex issue and people are giving up, partially or wholly, aspects of their civil litigate rights in order to receive compensation in this province. It affects compensation levels. Again, the committee's been charged with the responsibility of looking at this issue. To have the whole CICB aspect contained in two and a half pages and

not being that clear, I think we can do better. That's all I was trying to say.

Mr Winner: So if you do want to do better, it might be helpful to have a little additional information before we rephrase that so we at least can state something that won't mislead anyone who should read the report into thinking that they give up all their rights when they go to the CICB, because I don't think that's the case.

Mr Jackson: Okay, we'll stand down—we really should—

The Chair: Mr McNaught is getting more information on some aspects here, right? Okay.

Mr Jackson: Given that this committee is time-sensitive, and given that we have happened upon a couple of areas that are needing to be stood down, I'm thinking perhaps we should attempt a brief subcommittee meeting so that we can bring all of these matters to Mr McNaught's attention. We are going to run out of time at about the halfway point. I'm not even into the substantive part of this report in terms of areas. It'll leave the committee, when we run out of time, with the difficult task of finalizing its report.

So I'd like to propose that. The other option I have, of course, is to cause a motion, and then call for my colleagues to save that 15 minutes. But I think, in the interest of time, we might agree to adjourn and then, if it's possible, I'd make myself available to get as much of this information shared.

I'm also sensitive to the fact that Mr Murphy had legislative responsibilities that took him from the committee for a while and I know he wants to make input in some of these sections.

The Chair: Okay. Do you want to move that as a motion, or are you suggesting that we do this, or what are you—

Mr Jackson: Get some feedback.

The Chair: Mr Winner.

Mr Winner: My understanding is we still haven't run out of time on the initial allocation of 12 hours.

Mr Jackson: The clerk may want to comment on how much time we now have left.

The Chair: About an hour and a half, more or less.

Mr Jackson: Of our three hours, and we're at page—

The Chair: We're just finished page 8. Well, we're standing down, for that matter.

Mr Jackson: —page 8 of a 36-page report. I sense it's better if there's—these are legal questions I'm raising and I'd—

The Chair: What Mr Jackson is saying is that we meet as a subcommittee to try to—

Mr Jackson: To share this in more detail with you.

The Chair: —deal with some of this stuff.

Mr Winner: That would make some sense to me.

Mr Jackson: Thank you.

The Chair: If everyone is in agreement, then we'll adjourn and convene a subcommittee at a time that's convenient to all of us, okay?

Mr Jackson: Thank you, Mr Chairman.

The Chair: This committee's adjourned.

The committee adjourned at 1746.

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***Tilson, David** (Dufferin-Peel PC)

***Winninger, David** (London South/-Sud ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Troisième session, 35^e législature

**Official Report
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**Journal
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Lundi 18 avril 1994

**Standing committee on
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**Comité permanent de
l'administration de la justice**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Monday 18 April 1994

Lundi 18 avril 1994

The committee met at 1553 in room 228.

DRAFT REPORT
VICTIMS OF CRIME

The Chair (Mr Rosario Marchese): We have an hour and half remaining. I suggest that we go over this page by page again. Given that the subcommittee has gone through this, we've highlighted areas of agreement and areas of disagreement. I suggest that where there are areas of disagreement and that continues, you may decide to leave it that way and move on to the next item and, if there's time, come back to those areas of disagreement, to allow us to complete this report as best we can.

Once one hour and 15 minutes have elapsed, I will suggest that we recess in order to allow the committee time to think about what we want to do in the remaining time and then come back and finish it off. Is that okay?

Mr Cameron Jackson (Burlington South): You say you will recess. Are we going to recess for the day or for a specific period of time?

The Chair: No, a recess for five or 10 minutes to talk about what the members want to do with that report and not take the time of the committee to do that.

Mr David Winninger (London South): If I could just raise a point of order, because I certainly think it may govern the direction we're going in from here on in, last week I was astounded and shocked to see in the paper a report that this particular draft report, which says "Confidential" at the top, had been leaked to the media. I can't imagine who would have had the motive, the opportunity, the access to this report and would leak it to the media, which in my opinion is contempt of the work of this committee.

We've attempted to take a very constructive approach to this section 125 referral. We've provided access to information, access to staff resources. I even set up a meeting between the opposition critics and the minister and the deputy minister to get some of their questions answered.

I'm completely baffled that your role as Chair of this committee and your prerogative to report this to the Legislature have been totally undermined and usurped by someone who has failed to comply with even the basic standards of decency in dealing with this matter.

I'm not so sure that anything we say today may not be reported verbatim to the media. It particularly concerned me that some sections of this report which we had discussed and amended, on consent, were reported by the media in their original form. Some of the very words that we excised from the draft report were reported.

It particularly concerned me also that the release of this report, the leaking of this report was contemporaneous with a press conference called by a mother of one of the victims of crime. I was particularly concerned that cheap partisan politics were being played with this report in a matter so serious that it involves murder and the taking of lives.

I thought the Chair might have some comments to make with regard to the leaking of a confidential report to the media. I was so concerned with the sensitivity of this report that at first I had some reservations as to who should see it besides myself. But to leak it to the media is completely offensive to the work of this committee. I think the Chair should have some comments so that as we proceed through the last hour and minutes of this report writing we can all expect that our input will be held in confidence until we have a final report we can all live with.

Mr Jackson: On a point of order, Mr Chairman: That was a valid point of order?

The Chair: It's not a point of order.

Mr Jackson: Thank you, Mr Chairman. I'd like to proceed with the report.

The Chair: I agree. I think he's made his point.

Mr Jackson: Mr Winninger has been playing politics with this report since day one.

The Chair: All right. Let's not waste too much—

Mr Jackson: No, you've asked me for a comment.

The Chair: All right.

Interjection: We didn't ask for a comment.

Mr Jackson: Let me just say that whether the minister who was, by her own admission, privy to this report and who runs around southern Ontario making policy announcements in the face of it—we didn't debate that at length. Did I consider that cheap partisan politics? Yes, I did.

Did I complain when Susan Lee is brought here in committee of the whole to help write your report from your perspective? I didn't complain about that.

But you've got no position, Mr Winninger, to start talking about matters of confidentiality based on the way you've conducted yourself, period, end of sentence.

Mr Winninger: Just in addition, the minister had no access to this report at the time the announcements were made last year with regard to the victims' package. Quite frankly, there's a distinction between matters that are properly put to staff in the bureaucracy regarding specific information that the member requested and leaking

reports to the media. I'm surprised that Mr Jackson would even respond, since I didn't point a finger of accusation at him, but maybe he feels a little sensitive on this point.

Mr Jackson: You were accusing Mrs de Villiers.

The Chair: If you want to continue with this, that's fine with me. We have an hour and a half. If you all want to respond to each other's points in that way, I'm willing to allow it, but you're wasting time, I suggest.

The point Mr Winninger makes is that if a report is confidential, then it's confidential. We don't know who leaked the report, but once the committee agrees, I would remind members that until this report is tabled it says "Confidential." Unless the committee changes its mind, which it could do, I remind all of you about that particular point. But your point has been noted.

1600

Mr Jackson: We're not in camera, are we?

The Chair: We're not in camera. The document specifically says "Confidential," however. If you want to change that, either as members individually or collectively as a committee, we can do that, but until that time, that's what this report says. I'd like to move on.

"Changes to which the subcommittee has agreed are highlighted with grey shading. Previous text has a line through it. Text over which there is disagreement is italicized and highlighted with grey shading. Where the substance of the disagreement was discussed..." Mr McNaught has made a note of that. I suggest we start immediately on page 1, the introduction.

Mr Jackson: Mr Chair, given the fact that there are elements of this report we've never discussed in the committee, would it not be wiser for us to complete the report, since what you're asking us to review now is matters that have been reviewed twice.

The Chair: This is true.

Mr Jackson: And there's a section here, from approximately page 10 on, which was partially reviewed in camera, and from page 18 on, I believe, they've never been examined by the committee.

The Chair: This is true.

Mr Jackson: Could we perhaps change the order so we can get a stronger sense—

The Chair: That's fine with me. We left, I think it was, page 9 or 10 the last time as a full committee. We could start at that page if that's what you all wish.

Mr Winninger: It was my understanding that we had completed page 9 and I believe the research officer does have some notes on what we had agreed to up to page 9.

Mr Andrew McNaught: I believe we finished page 11, the second recommendation.

The Chair: That's true. Okay.

Mr Winninger: We're up to which page now?

The Chair: Page 11, "The committee recommends."

Mr Jackson: Mr Chairman, I was quite hopeful that we would deal with the parts of this report that have never been examined by this committee.

The Chair: The subcommittee examined some pages here but the full committee left its work on page 11.

What are you suggesting we do?

Mr Jackson: I find little difference between starting at page 1 and starting at page 9. I'm suggesting that we start with the material that has never been discussed in this report in committee or by anybody. We have now about an hour and 10 minutes left, or probably an hour and five minutes. That's my recommendation.

The Chair: Where do you want us to begin?

Mr Jackson: Our researcher will advise us where the committee in committee of the whole finished off its tertiary review.

Mr McNaught: We left some points undecided and we skipped around a bit, so it's a little difficult to say exactly where we left off. I would say page 19 then.

The Chair: The subcommittee went all over the map. It went to the very end as well.

Mr McNaught: That's where Mr Winninger started to identify recommendations he had difficulty with but we didn't have time to discuss the reasons behind that.

The Chair: Are you taking us to page 19 then?

Mr McNaught: Yes.

The Chair: Mr Jackson, is that okay with you?

Mr Jackson: I might have started one page earlier, but for purposes of proceeding, I'd like to get into this part of the report if we could.

Mr Winninger: Then maybe afterwards we can come back and deal with some matters that were stood down.

The Chair: If there's time. Page 19. Comments?

Mr Winninger: I think there was consensus around recommendation 8.

Mr McNaught: We actually discussed 9. Ms Lee from the ministry raised a point about recommendation 9 and then we left that undecided.

Mr Tim Murphy (St George-St David): What you've highlighted reflects the original wording, correct?

Mr McNaught: Yes. But I made a little note at the end of the recommendation that there was a concern raised by the ministry with the wording.

Mr Murphy: In my view, the current wording's fine.

Mr Winninger: There's one aspect, though, that needs to be addressed. There may be victims/witnesses who do not want to have contact with the crown for one reason or another, so there should properly be some words added to recommendation 9 that would qualify victims/witnesses who wish to maintain contact.

Mr Murphy: Sorry, I didn't follow that one.

The Chair: Again, Mr Winninger.

Mr Winninger: There will be victims/witnesses who would enjoy contact with the crown and the police from the time that charges are laid to—

Mr Murphy: Oh, but that's number 10.

Mr McNaught: Mr Winninger, I think you might have last week's draft. The recommendation numbers have changed by one because we've added a recommendation early on.

Mr Winninger: When was the new draft sent out?

Mr McNaught: Last week.

The Chair: It was Thursday or Friday.

Mr Winninger: Okay, so the same point would obtain with the new recommendation 9. That is to say, I would recommend that words be added after "victims/witnesses" to the effect that victims/witnesses who may wish information "are being fully informed about the judicial process."

Mr Jackson: Because we're calling for a review, we're not calling for amplification, I don't think the words are necessary. I think that would come out of the review. Basically, it's one of the weakest recommendations we have. We're going to study something here, so on that basis, I wouldn't want to define the study. I simply would like to say, let's look at how we get access to people, then we'll let whoever, the minister, in her study, determine that. I don't want to confine it.

If in fact the minister consults with victims, the crown etc, and they come to that conclusion, why should we put those parameters on it, since nobody suggested that parameter? It may be Mr Winninger's parameter, but I think it weakens an already weak recommendation. All we're talking about is reviewing the damn thing.

Mr Winninger: I don't care strongly one way or the other. Presumably these would be victims/witnesses who are wanting contact and who are wanting information.

Mr Jackson: There's no question it'll vary on the nature of the crime, but to try and write that into a recommendation I think is not really helpful.

Mr Murphy: I agree.

Mr Jackson: Somebody who has been physically abused or threatened is definitely going to want to, but we're trying not to define people by their crime here, or what's frivolous or what's unnecessary. I'd rather just leave that to the minister's discretion.

Mr Murphy: Just say yes, David. Marion will be happy.

Mr Winninger: Yes. Let's move on.

The Chair: Okay. Page 20, recommendation 10.

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Mr Winninger: Again, it's simply asking that the ministry consider ways in which contact can be maintained, so I suppose the same commentary would apply here too.

The Chair: But you can live with the wording?

Mr Winninger: I think so, yes.

Mr Jackson: It doesn't tell us the nature of the contact: if it's the police with respect to the charges being laid; if it's the crown with respect to how they will present themselves before the court; or if it's the victim's advocate who is to provide them updates for purposes of their counselling and so on.

I know there are a couple right now that I'm familiar with where they're in and out of psychiatric treatment and it's complicating when they can appear before the courts. That's certainly not something the police or the crown can really help them with, but a person with other duties—it doesn't tell me what kind of contact. I'm concerned with what that means.

The Chair: Any suggestions for additions or changes?

Mr Jackson: How different is that from number 9, if you don't mind me asking? One is about the judicial process. That deals with plea bargaining and matters of that nature, of informing them if a deal has been made. That's obviously a major concern and that was what we heard before the committee. But we also heard cogent arguments about ongoing support in other areas, so I somehow feel a need that we should be saying more or not saying anything at all. If I were reading the report, I'd want to know what kind of contact.

Mr Murphy: One other comment I would make, and I can't remember whether we dealt with it elsewhere, but we did hear evidence on the point of people who were victims but they hadn't found the perpetrator yet, and the provision of services, contact, information to the victim as the investigation proceeds. The wording of this doesn't suggest that concept is included in either recommendation 9 or 10, because it's more charge-based language, so you've found somebody. I'm just wondering whether there might not be just a word or two we can add to capture that idea. I can't remember, somebody came in and gave evidence on that before us last summer.

Mr Winninger: Just in terms of 9 versus 10, I certainly see the distinction, because 9 deals with the victim/witness assistance program per se, and of course not all jurisdictions have this program. So I think 9 is a more specific case of 10, and I can see why we might want 10 as well as 9.

Mr Murphy: To the researcher, did we talk about the issue of someone where they hadn't laid a charge yet somewhere else?

Mr McNaught: Page 6, second paragraph.

Mr Jackson: Yes, it's talking about advising them of the Criminal Injuries Compensation Board. I think what's meant here is, the crown is going to interview you. A victim/witness program will assist in preparing you to be able to speak judicial language and to demystify the process you are about to go into. The crowns are not necessarily the best people to be doing that.

The other issue which was raised was the right of a person who is being used by the courts as a witness to testify and who is one and the same, the victim, to be informed where the crown has done plea bargaining and that they be advised of that and not have it unveiled in the presence of the courtroom in front of them, that type of thing. That's one area, and I certainly would recommend, "consider ways in which contact can be maintained with the victims/witnesses from the time charges are laid as they relate to the judicial process, and including plea bargaining."

Again, we're just asking the minister to consider ways, but it's not a routine requirement to let the victim know: "By the way, we dropped the charges to a lesser charge. We thought you'd like to know the charges against your assailant have been reduced to a lesser charge."

Mr Winninger: That's one of many different matters that victims/witnesses may have an interest in. Are you saying that should be set out here specifically?

Mr Jackson: I'm saying that this clause as it stands tells me nothing and I would prefer that we were either

silent or clear, one or the other. But one asks, why is it in there? Contact with whom? I've offered one name, Mr Winninger, so you can come up with a couple more if you think there are more people you felt should be in there; or we can ask Andrew what he thought and if he says it wasn't all that compelling, we can drop it.

Mr McNaught: There were a couple of general recommendations made by witnesses. They felt they were out of touch with the process until it got to trial. There was nothing really specific in that regard.

Mr Jackson: I could take a literal—one of the sections of the victims' bill of rights sets out clearly that contact should be made during this process. By whom and for what purpose? You can use that phrase, if you wish. After all, the minister's only considering ways in which it can be achieved.

Mr Winninger: Just to pick up on what Tim said, why not say, "from the time of the offence to the release of the offender" instead of "from the time charges are laid in a case to the time of trial"? Instead of saying "ministry," we have to say, "the ministries of the Attorney General and the Solicitor General and Correctional Services" in order to cover off—

Mr Jackson: Yes, and the federal departments as well. I have a series of recommendations that came from the public hearings with respect to requests by Ontario to the national parole system and amendments thereto, which puts the onus on them to report decisions of early release.

The Chair: Can someone summarize the agreement?

Mr Murphy: I like Mr Winninger's wording better. It is a fairly general, just "consider ways," but I think it is a direction to each of those ministries and perhaps the responsible federal agencies, and I think from the time of the offence to the release of the offender is the appropriate time frame. So it would be, "That the ministries of the Attorney General, Solicitor General and Correctional Services, as well as responsible federal or equivalent federal agencies, consider ways in which contact can be maintained with victims/witnesses from the time of the commission of the offence to the release of the offender."

Mr Jackson: Commission of the offence?

Mr Murphy: Yes.

Mr Jackson: That includes the police and investigations.

The Chair: Okay? Very well. Anything else on that page? No. Page 21 then.

Mr Winninger: Perhaps for the sake of clarity, at the bottom of the second paragraph where it says, "In Ottawa, closed-circuit television has been provided to allow children to testify outside a courtroom," added to that should be a statement that closed-circuit television has been used in other localities as well, because that would reflect the fact that even though the closed-circuit television is established in Ottawa, similar equipment has been used elsewhere.

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Mr Murphy: I don't have a problem with the concept. I guess the only distinction I would make is that we

should say something about Ottawa having a permanent facility, and that closed-circuit television has been used in other courtrooms in the province.

Mr Winninger: On an ad hoc basis.

Mr Murphy: On an ad hoc basis. I think that's a fairly accurate description of the reality as we heard from Susan during our subcommittee. Sorry, Ms Lee.

The Chair: Okay. Anything further on that page? Can we move on? Page 22 then.

Mr Murphy: I have a slight problem with the wording of number 11, only to the extent that it says, "the use of closed-circuit television only be considered for those areas...where the number of cases warrants...."

As we heard from Ms Lee, for example, they have had opportunities to get them from Radio Shack or local agencies where they've been able to get the judge to agree to the order and it may not be an environment or a circumstance where numbers would otherwise warrant. This wording seems too restrictive. I think it's worthwhile considering it in other circumstances if you can find people who will give you the facilities to do it.

Mr Winninger: I have another problem as well, which goes to the root of this recommendation, I suppose. I go back to a conversation we had last week wherein I referred to the Criminal Code, which provides that judges may order the use of closed-circuit television. I've yet to hear of a case where a judge has ordered closed-circuit television and closed-circuit television hasn't been used.

To say that to expand the use of closed-circuit television should be made a priority of pilot project funding is, I think, going a little too far. To say that the ministry should make its best efforts to ensure that facilities are available for closed-circuit television in all courtrooms seems more appropriate.

But that doesn't require that permanent equipment be established in every courtroom or even in those courtrooms where the number of criminal cases warrants this service. As long as there's access to closed-circuit television to meet the requirements of the Criminal Code, then you're protecting the more vulnerable witnesses. I would say if this recommendation is going to remain, it needs to be fundamentally changed.

There are many things that could be made a priority of pilot project funding, for example, the extension of the victim/witness assistance program. All of these things require money. If it's not cost-effective to have a closed-circuit system in every jurisdiction, then there's no point recommending it. As long as the access is there, that's the important thing, not whether there's a permanent system in place.

Mr Jackson: Very briefly, I was going to recommend we get rid of this nonsense of a pilot project, just to make it a funding priority. Obviously I'm not going to get much support from the government.

I'd just like to point out that the case that I brought forward and that Louise Sas from the London child witness program investigated for me dealt around this whole issue of a four-year-old who had been sexually assaulted, so I feel very strongly. My recommendation would be to remove the notion of pilot funding, that in

fact we should have a greater access to this service so more cases can be tried and heard.

My local CAS has about a 35% increase in abuse and about a 45% increase in child sexual abuse. You may have been right, Mr Winninger, five years ago, but I can't buy it today with the number of cases that are just not getting to trial, and that frightens me. So on my recommendation, Mr Chairman—if Mr Winninger wants to gut this further, fine—I'd like to delete "pilot project" to have it be made a funding priority.

The Chair: Okay. We have a problem, because there are three different views on the floor.

Mr Jackson: Whatever Mr Winninger does, he has the vote, so let's find out what he wants to do.

Mr Winninger: I'm comfortable with a recommendation that access to closed-circuit television be protected—be encouraged more than protected—for child witnesses, and also in some cases that can involve vulnerable witnesses; in any event, that access to closed-circuit television as a way of giving evidence in the courtroom be encouraged, but not that it be made a priority of pilot project funding or of funding.

I have some difficulty with the last two lines, that the use "only be considered for those areas of the province where the number of criminal cases warrants this service." Surely the use will be anywhere that a judge orders closed-circuit television evidence appropriate.

The Chair: If there's no agreement, we'll just have to leave it and come back to it.

Mr Jackson: Mr Chairman, we've invested a considerable amount of time, and I just want to be clear. Who are we telling that we should encourage more use of something that we're not going to make more available? Who are we giving this recommendation to? To tell the victims?

Mr Winninger: The evidence was the judges in some jurisdictions are reluctant—

Mr Jackson: I understand that. I just wanted you to tell me: Who, in your mind, are we recommending "encourage more use" of something? The judges of Ontario? I'm not arguing with you.

Mr Winninger: That's kind of begging the question, because the argument was that judges aren't ordering it because the facilities aren't there. I'm saying it's an access issue and we should reflect in our recommendation what we heard in terms of ensuring access to closed-circuit television where it's appropriate and the judge so orders. That's all. It's an affirmative statement that this is one way that children can give evidence without suffering undue trauma and may result in more convictions.

Mr Jackson: If I hear you correctly, what you're saying is that where a judge orders it, the government will fund it in order to provide it.

Mr Winninger: Well, I think so. I'm saying that where a judge orders it, there would have to be an extremely good reason why the facility isn't provided, and I've yet to hear of a case where a judge ordered it and it wasn't provided.

Mr Jackson: Perhaps when Mr Winninger knows the

answer to that, he can inform the committee and we can complete this recommendation. I've raised questions of form for helping to write it, and as soon as you're clear on what you want to do, you let us know.

Mr Winninger: I have a suggestion that we may be able to come up with alternative wording that may be acceptable to the opposition critics. We can look at that.

The Chair: All right. As we move on to the other items, if others in the room who are here to assist, and Mr Winninger's about to talk too, come up with a wording that they can present and we can agree and there's time, we should do that. Okay? So we'll come back to this item if there's time.

Mr Jackson: I tried.

The Chair: Anything else on that page?

Mr Jackson: In the case of child victims, I would like to propose a motion that—

The Chair: Sorry. Refer us to the appropriate line.

1630

Mr Jackson: We're in the section on child victims, are we not?

The Chair: I was still asking whether there's any other further comment on page 22.

Mr Jackson: Yes. Before we leave the section on child victim services, I had two additional recommendations to make.

We heard from the Voices for Children's Rights organization on June 1, 1993, before the committee, and I'd like to read into the record a recommendation that:

"A victim of a sexual assault experiencing any post-traumatic stress disorder give testimony in the judge's chambers in the presence of the judge, crown attorney and defence counsel. Video and audio tape will be forwarded then to the accused."

I'd like to make that as a recommendation.

Mr Murphy: Sorry, I didn't quite get all of that.

The Chair: Do you want to repeat that again then?

Mr Jackson: "A victim of a sexual assault experiencing any post-traumatic stress disorder give testimony in judge's chambers in the presence of the judge, crown attorney and defence counsel. Video and audio tape will be forwarded then to the accused."

The accused has the right to hear what's being said. This ensures that it not be done and it avoids the issue of videotaping and everything else that's a huge expense. It's set up in the room, certified, and it can be done in the judge's chambers. That was a recommendation to alleviate some of these problems.

Mr Winninger: I don't think there's anything stopping the parties—that would be the defence attorney and the prosecutor—on consent to arrange to have evidence given in an other than standard way. However, for us to recommend this universally I think goes well beyond what's required.

We already have the protections that were built into the federal amendment to the Criminal Code, which were arrived at after considerable consultation, and what you're doing is in a sense providing and recommending a further

amendment to the Criminal Code, which I think goes a little beyond the ambit of this report. In any event, you're suggesting that it be done on a universal basis. What I'm saying is, there's already provision in place that allows the giving of evidence in other than a standard way.

You may recall a recent case where a police officer involved in the investigation of a well-known murder was given an opportunity to give his evidence in a modified courtroom setting where the judge took off his gown, came down to the level of all the parties and witnesses in the court and wore a turtleneck and it was done in a way that would reduce the anxiety.

Mr Jackson: Really, you're getting a little far from the issue.

Mr Winner: All I'm saying is, these things are done. They're done from time to time to reduce trauma.

Mr Jackson: I just want it clear for the record. This is for child sexual assault victims only, and it is a matter of a right for the crown attorney to request this on behalf of victim. That's all I'm proposing. We can dispose of it in a quick vote.

I have another one which has to do with the treatment of the screen, which has to be, as I understand, by mutual consent. I wish to allow the victim the right to be screened as a child, and the crown articulates that right on behalf of the child. As you know, children have no rights because we have no law governing their rights. However, the crown would be governed by that, and that would be another recommendation which comes from the rights.

Mr Winner: What was your recommendation, just for the sake of fairness?

Mr Jackson: Let's deal with this one. It is tied to sexual assault of children, and the way this is written, the crown would proceed to the judge indicating that is in the best interests, and the assailant would not have the right to overrule that. The issue is—

Mr Winner: Overrule what?

Mr Jackson: The decision by the judge to proceed in chambers. There's a mutuality, in my understanding, in accordance, by agreement, that they not be in the courtroom together. I'm simply saying that it be done this way, that the crown request that on behalf of the victim, as opposed to the crown and the defence saying, unless there's mutual agreement, it can't be done in judge's chambers. That occurs, I'm told, and the same with shielding the victim. Some of the accused want to confront the three-year-old to say, "I didn't do it." The crown should be able to proceed, in the best interests of the victim, to say, "We request screening."

This has nothing to do with whether screening's available; it exists in every courtroom. It is the notion of when the judge proceeds with screening and my understanding is the judge only does that if both parties agree to it. This would allow a fundamental shift to say that the crown, acting in the best interests of the victim, calls for the screening to occur.

Mr Winner: When you say screening, you mean the use of a screen in court?

Mr Jackson: That is correct.

Mr Winner: The judge makes that decision. The accused doesn't have to agree to it. That's because it's in the Criminal Code. The same with closed-circuit television. The judge can make that order, notwithstanding the agreement or disagreement of the accused.

Mr Jackson: That's not my understanding.

Mr Winner: We can get an opinion on it, if you like, but that's the way it's drafted in the Criminal Code. The judge makes the order.

Mr Jackson: What we're saying is that the process be an option for the victim to alleviate any further trauma at the discretion of the crown attorney and the victim.

Mr Winner: But that's how it is now.

Mr Jackson: No, it's not.

Mr Murphy: One quick comment, if I can. I think the recommendations are worthy of consideration. The one thing I'd like to find out is the degree to which either of them are within exclusive provincial jurisdiction or would require either Evidence Act or Criminal Code amendments to put into effect. I don't know the answer offhand.

Mr Jackson: If so, the recommendation would be that the Attorney General approach the federal government about amendments to the Criminal Code that will allow—bang—the wording I'm proposing. That's all.

Mr Winner: Subject to any comments from my colleagues, I think there are protections for children built into the Criminal Code. They were recently arrived at in 1989. In one of the recommendations I don't see any change from the existing law, and in the prior one I think that it doesn't balance off the rights of the accused against the rights of the victim.

The Chair: I think we should move on. Do you agree—there's no agreement.

Mr Jackson: So the government won't support those two amendments?

Mr Winner: They're not even in writing.

Mr Jackson: They're contained in the report. I read them verbatim. The clerk will photocopy it and then you can vote on it. How's that?

The Chair: Let's photocopy them. If there's time, we'll come back to these. That'll give an opportunity for the members to see the wording and, if there's time, we'll deal with it again. Moving on then, page 23.

Mr Murphy: Mr Chair, on number 12, I recall the discussion and it doesn't appear to be reflected in this amendment that we seem to have set up Toronto's old city hall court as the model of how to do this. There are certainly aspects of it that are good, but I think, as we discussed, it's up on the third floor in that old city hall. It's not the best courtroom in the world. I think we should make some reference to the fact that some aspects of Toronto's old city hall—not be quite so effusive in our praise of that existing facility.

The Chair: There were some changes in fact that were recommended in terms of wording, I think in the line that you're suggesting as well, Mr Murphy. Does anybody else recall?

Mr Winner: I certainly don't recall, but I didn't regard this as being effusive with praise for old city hall. In fact it's quite a neutral account of what's provided there, if you read those lines again. I take it you're talking about the lines immediately under recommendation 11?

Mr Murphy: Actually I'm talking about the actual recommendation wording on page 23.

Mr Winner: Yes. There are certainly features of the Toronto's old city hall that I would not want duplicated anywhere.

1640

The Chair: Mr Murphy, what did you suggest again by way of changes?

Mr Murphy: Off the top of my head, what I really want, and probably Andrew can come up with it, is that the bottom line is that we want it to say that the modifications that have been done to that courtroom to accommodate the fact that it's a special courtroom for children are the kinds of things we want to look at in other courtrooms. It's really just wording that portrays that message that I want more clearly put.

Mr Winner: How would it be if we just went with the first sentence of number 12? It would say, "That existing courtrooms be modified to accommodate the trial of cases involving child victims." Then we don't have to extol the merits of Toronto's old city hall.

The Chair: Right. What about the last sentence?

Mr Winner: Modifications can be done for purposes of a trial itself. They don't have to be permanent; they could be temporary. Some of these, like booster seats and microphones, are things that could be introduced, I suppose, at any trial. Every court doesn't necessarily have to have a private waiting area with toys. That would be a good idea, but certainly there are some basics that would put a child at ease and that would be more child-focused and that could be done in virtually any trial. Rather than limit it, we could have it as a general statement.

Mr Murphy: I think that waters it down too much. I understand what you're trying to do, but I think some of the specific kinds of things you can do to modify a courtroom are what you're trying to get at, those modifications like the ones that are in old city hall.

The Chair: So Mr Murphy would like—

Mr Murphy: Something like, "That existing courtrooms be modified to accommodate the trial of cases involving child victims."

Mr Winner: My problem is if these are permanent changes, because the evidence is that Toronto, which is the busiest metropolis in Ontario, has only two cases, I think it said, a day in this courtroom. By the time you get to Kenora, who knows how many cases you're going to have in a year. Surely the modifications would have to be made on an ad hoc basis to accommodate children, and those might be encouraged.

Mr Murphy: I think that's reflected in the last sentence in the recommendation.

The Chair: Rather than trying to work out the

wording, there's a sense, Mr Winner, that you don't disagree with what Mr Murphy's saying. His wording suggests that we look at some features, some of the modifications that have been made at city hall, as being good ones. If we can come up with wording in between, we should look at that, rather trying to work out the wording here. But you don't disagree with that suggestion, right?

Mr Winner: No. I'm just worried that the research officer may not have enough direction on this point.

Mr Murphy: I trust in his native intelligence.

The Chair: On that particular line, the second sentence, I think some wording can be worked out that's not too complicated. Basically, the idea is to look at the modifications that have been made at city hall as one example of the kinds of changes that have been made, but not as the example of the kinds of changes we want to see made in the courtroom.

Mr Winner: Yes. For example, it might say, "Modifications"—

The Chair: —"such as...."

Mr Winner: —"such as or including the kind that have been made at city hall."

The Chair: And we leave the third sentence in then.

Mr Murphy: Yes, the third sentence is fine.

The Chair: Mr Winner, is that fine?

Mr Winner: It's rather vague. It says "where the number of cases warrants such services."

The Chair: I agree; I think the third sentence is more general.

Mr Murphy: The government's is more vague; leave it.

The Chair: Mr Winner, you were trying to be very helpful; I agree.

Mr Winner: Let's rephrase it, let's redraft it and then, if we're all comfortable, fine.

The Chair: All right, item 13? Page 24.

Mr Winner: That was just a change in wording?

The Chair: On the previous page, yes.

Mr Jackson: Are we on page 24?

The Chair: Page 24, yes, item 14.

Mr Jackson: Voices for Children's Rights made a presentation to us which indicated that we should have someone called a victim advocate. I'm concerned by what we mean by: "That court preparation services be made available to all children...." It is so vague, and yet when we look at the deputation from the London child witness program, they're indicating that specialized victim/witness services be expanded.

We should be saying that if that's in fact what we believe, or we should clarify "court preparation services." We'd better qualify that these are human resources, because we've already indicated that it's at the privy of the judge etc whether or not you're going to get video equipment and you get into the physical aspect. I'm assuming we're talking human resources here.

The Chair: On page 23, the last paragraph there

speaks about, "Court preparation includes: education about court terminology and procedure; helping children cope with stress and anxieties relating to the incident and to testifying in court; helping them testify in court; and providing an advocacy role on their behalf."

Mr Jackson: Providing advocacy, very good.

The Chair: So the recommendation speaks to that.

Mr Murphy: To pick up on Mr Jackson's point, and I think it's an important one, that we be specific, I think we should say in the recommendation, "That court preparation services modelled on those provided by the London child witness program be made available to all children." That would be the change to reflect Mr Jackson's purpose, that it would be services modelled on what's provided in London, which I'm sure Mr Winninger would support, coming as he does, from London. That would be my recommendation for an amendment to 14.

Mr Winninger: I wouldn't acquiesce in that change of wording. I think the way the wording presently reads is sufficient. It may be that every community can't support a child witness project—

Mr Murphy: It says "modelled."

Mr Winninger: —or that every community doesn't need a child witness project. What we have is a situation where the federal government established two child witness projects, funded them on a pilot project basis for, as I recall, three years, then dropped the funding and left it to the province to step in and pick up that funding.

Mr Murphy: If you had your provincial victims' fine surcharge in the House now, you might have some money.

Mr Winninger: I think we also have to distinguish between the victim/witness assistance program and the child witness program. London just happens to have a number of psychologists and other workers who have taken it upon themselves to study this particular issue of preparing child witnesses for court, counselling them and so on. It may be that in some communities the crown attorneys who are specially trained in matters involving child abuse may perform that service. I think that 14 as it presently reads captures that direction.

Mr Murphy: But David, you'll know that the recommendation focuses on the services and those services are those that are modelled upon those provided, which are listed, as the Chair quite rightly pointed out, on the bottom of page 23 and over at the top of 24. We're not saying by whom they should be necessarily supplied or that they were going to have as fulsome—although we have a debate about what that means—a range of services as London might have because of some of the valid points you've pointed out. None the less it says (a) it's the services that matter and (b) it's modelled upon those.

1650

The Chair: Mr Murphy, rather than saying "modelled after," which sort of boxes it in, what if you said "could include"? Use the same language we used around the features of the courtroom of Toronto's old city hall.

Mr Winninger: Why not just take what's above and include it in the recommendation as well—when I say

what's above, some of the wording that is at the bottom of page 23 and at the top of page 24—and say, if you think 14 isn't specific enough, "including education about court terminology and procedure, helping children cope and helping them testify in court"?

Mr Jackson: Mr Chairman, this is a very significant recommendation. This includes children's aid society workers being impelled to be there to assist. Who's paying for those costs for them to be there? They're not required necessarily to be there. In this restraint mode, they're having to drop several of these cases. That's what's going on out there. That does not happen in London. They make sure of that. What this recommendation tells me is that the service will be applied evenly across the province.

I can interpret the wording as it is; I'm comfortable with the wording as it is because, in my view, I've put my signature to an expanding of the London project in all corners of the province. That's what that says.

The Chair: Okay.

Mr Jackson: It has funding implications, but I don't need to gild it any more than it is because you rightly pointed out to me that it includes the London child witness project as the example leading up to what we're recommending should be applied evenly across the province.

When the children's aid society steps in, when it's involving a family member, as you well know, then that includes their services, making sure they're funded accordingly to be in court and to provide those services. I like the recommendation because it's one of the only expenditure ones that doesn't have a zillion government bells and whistles on it.

Mr Winninger: In terms of using wording like "modelled after," I would object to that. I might add that it's my understanding that the child witness project does have other sources of funding. We're the main funder, but there was a period of time, as I recall, when the federal funds dried up, while we were getting our own funding in place, that they continued. I believe that the \$140,000—

Mr Murphy: Are you talking about the current witness—

Mr Winninger: Yes.

The Chair: Okay. Can we move on?

Mr Jackson: Let's go. It's 154 courtrooms times \$140,000.

The Chair: Here we go. Page 25.

Mr Jackson: No problem.

Mr Winninger: That was 14.

The Chair: We're keeping it as it is. Recommendation 15.

Mr Jackson: The issue of victim safety deals with the issue of notice. In other words, if threats are made against a child, to revisit the child upon early release or release for any reason, then all the recommendations before the committee were that there be notice. London said that; Voices for Children's Rights said that; CAVEAT said that; there's a whole series of them.

Frankly, to clarify this, we should be using language that parole boards be directed to notify, where possible, that someone has gained early release for whatever reason, otherwise what does the safety mean if the person's incarcerated or if the person's on bail, to let them know that they are—"We thought we had better call you and let you know that so and so has applied for and received release pending—what's the proper wording, Tim?—after a bail hearing and before sentencing?"

Mr Winninger: Doesn't that come in after recommendation 21? It's on page 32. Isn't that a notification issue?

The Chair: Yes.

Mr Jackson: Yes, and that's what we're saying here. I want to make sure. If we're not going to support it in the other end, we've got a contradiction, because the notion of the safety of an individual from someone who is incarcerated is to let them know that they're no longer incarcerated or that they're heading your way, that they've been released.

Mr Winninger: Here, all 15 speaks to is "information about the corrections and parole systems," how they operate generally, not with regard to one specific offender.

Mr Jackson: "...or how to lodge a complaint if an offender violates parole." Are you reading that on page 25?

Mr Winninger: What number are you on?

Mr Jackson: Page 25. Leading up to recommendation 15, safety has to do with an offender being at large for whatever reason, okay? Information about who's on the parole board and how frequently they meet is of little consequence to a victim and their family. They want to know that their assailant who has been charged is on early release or is on medical leave or is working on day passes, "If anything extraordinary occurs, please let us know."

If a peace bond is served on an individual, how effective is it if the individual doesn't know that they should be watching for that other individual? If you know how peace bonds work, you know how terrible they are in terms of the onus on the person who's the victim to leave and notify the police, and they have to lay the charge and prove that the individual was there. That's another story. It's not in this report. But if that's all we're saying about the safety of a child victim or any—

Mr Winninger: I'm just a little concerned about the placement of this recommendation. Are we suggesting that there should be different after-court victim services for children—

Mr Jackson: That's the section we're on.

Mr Winninger: —and other situations? Because 15 is still under "Child Victim Services."

Mr Jackson: I'm just dealing with the report as it is in front of me. All I'm saying is that notice of early or pending release surfaces in three places in this report: The victims' bill of rights, the issue of notice, and here. If we're going to be inconsistent, my job is to make sure that isn't brought to our attention after this is printed. Do

you want to stand that section down until we get that clear?

The Chair: Yes, we could. Stand it down, then? Okay. Page 26. Any comments on recommendation 16? Is there agreement?

Mr Winninger: I think it's a motherhood issue.

The Chair: Yes, okay. Page 27.

Mr Jackson: We use the word police "departments." I think we use the phrase "police services" in Ontario. Even though "police departments" is well known, it's not the current language, like "police force"; we try not to use that word.

The appropriate reference within the Sol Gen's is "victim assistance program." That's set out in the police act. What we're saying perhaps here, I hope, is that victim assistance programs should be established within each police department. To simply establish an office, that's four walls and a desk and a phone perhaps. I think we're talking about the program, and that flows from the Police Act, that victims shall be treated in a certain fashion and that's what caused them to develop these.

It's more a language issue, and I raised that with the committee four weeks ago.

1700

Mr Winninger: Just by way of elucidation, I checked with the Ministry of the Solicitor General and was advised that there are already police-based victim assistance programs in Kingston, Sault Ste Marie and Brant-Haldimand, as well as some local police victims services.

Mr Jackson: Halton was one of the first.

Mr Winninger: Yes, that would be an example of a local victims services.

The Chair: I'm sorry. Are we agreeing to something?

Mr Jackson: I want to make sure we're using common language. If that's what we're being called by the Sol Gen's office, I think when the Sol Gen picks this up and reads it, we should be using that language. That's all I'm saying.

Interjection: Agreed.

Mr Jackson: Moving right along.

The Chair: Mr Winninger, a further response?

Mr Winninger: I'm not sure why it would have to say, "similar to the existing program in British Columbia." Surely it stands alone.

Mr Jackson: You're asking why we have that recommendation?

Mr Winninger: We're dealing with number 17, are we not?

Mr Jackson: Yes.

Mr Winninger: Okay. I'm not sure why the words at the end of it, "similar to the existing program in British Columbia," need to be there. As I said, there are already some pilot projects involving police-based victim assistance. Why even say "That the government examine the feasibility...."? Why not recognize that the police-based victim assistance program be expanded in Ontario?

Mr Murphy: I disagree.

The Chair: There's a bit of disagreement here.

Mr Jackson: I can't understand this. It's a damn good program.

The Chair: We can stand it down, obviously.

Mr Winninger: I don't know that there's any serious controversy here. You'd like to see the police-based program expanded, right?

Mr Jackson: Yes.

Mr Winninger: Okay. I'm comfortable with that. All I'm saying is, let's not tie our hands and make it "similar to the existing program in British Columbia." It may well turn out to be similar, but why, just because there's a program in British Columbia, are we supposed to implement it in Ottawa?

Mr Jackson: We're not saying to implement it here, unless my copy's different from yours. It is "examine the feasibility." These are weasel words of the first order in this building. So what we're saying is, could you please, just maybe give a little bit of a look at one of the best programs in all of Canada? The fact that the NDP government brought it in in BC is to their credit. The fact that in spite of all the cuts, it's still being maintained I think is to be celebrated. If you wish to suggest that BC's program isn't a good working model for citizens, tell me.

Mr Winninger: But why not modify it a little and say "that provides the kinds of services under the existing program in British Columbia"?

Mr Jackson: Because the people who came forward, to a person, on this subject said that BC had a wonderful model and they presented materials on it. I frankly think it's a good model. I think if you're going to ever convince your government to study it, it's a nice place to start.

The Chair: Is there agreement or disagreement? If there's disagreement, we'll move on.

Mr Winninger: I just don't see why it has to be similar to British Columbia.

Mr Jackson: Is that a yes or a no?

Mr Winninger: It's a no.

The Chair: Okay, move on. Page 28, item 18. Agreement? Disagreement?

Mr Jackson: On 17?

Mr Winninger: We have a problem with 18.

Mr Jackson: Or 18, I'm sorry. I'm on two drafts I'm working with.

Mr Murphy: I guess I have a problem with the "with sufficient resources to do so" line, because the obligation of the Police Services Act to provide services to the victim is a mandated obligation, not subject to a resource limitation. In essence, this recommends that fewer services be provided than is currently mandated and I can't support that.

Mr Jackson: I completely agree. I can't lend my name to a recommendation which says that, based on your availability of funds, you can close one eye to one of the sections of the police act.

Mr Winninger: Do we have the specific wording of the police act here?

Mr Jackson: Andrew found the section. Where is it Andrew?

Mr Murphy: Section 1 of the Police Services Act requires that police services be provided in a way that recognizes "the importance of respect for victims of crime and understanding of their needs."

Mr Winninger: We're not dealing with training programs there; we're dealing with a general principle that police be sensitized to these matters. So there's nothing inconsistent with the police act to include the phrase "with sufficient resources to do so." It doesn't mention training programs per se. It just says, "Get the message across."

Mr Murphy: The hair is well split; you have my position.

Mr Jackson: We say it should not have "with sufficient resources to do so" and we prefer the original wording.

The Chair: Can I ask a question? Was there a discussion in our subcommittee where people might have been concerned about the police department not having the money to do something, and as a result of that concern this wording might have come up?

Mr Murphy: It may have been.

Mr Winninger: For example, the Ontario Police College may offer training programs accessible to departments across the province that may not have sufficient resources to implement their own local programs. The goals and objectives of the police act will still be served, no matter where they're trained, but I don't think we should mandate every local police department to have a training program.

The Chair: So there's no agreement.

Mr Winninger: There may be three officers in a small police department. How do you set up a training program?

The Chair: You made your point, Mr Winninger, but there's no agreement.

Mr Jackson: This now moves into number 18. We've got to be careful now. We're saying that police shouldn't receive training on child abuse. We say in a previous section that they should and now we're saying, if resources are available, they'll get the training.

Either we lift this whole section and put it in with child victims so that—it could have gone in either section, so that's not a problem for Andrew. But we're semicontradicting ourselves when we say that they should receive it and then we now have this recommendation two pages later which says "where resources are sufficient."

The Chair: I want to point out to the members we have about 14 minutes left.

Mr Winninger: I don't want to flog it, but the only issue is whether every single department in the province needs its own training program or whether the officers of every single department are trained somewhere, maybe locally, maybe elsewhere.

1710

Mr Jackson: I think that in each police services

jurisdiction in Ontario, the training be initiated to give force and effect to the principle that a child sexually assaulted will be interviewed by an officer who is sensitive to the child's circumstances as a victim. That's all we're trying to say, and not to be as picayune as "every officer in a department," because I'm still objecting to the words "police departments." That, to me, is the drug department versus the morality department. I think they're police services or police boards.

I think number 18 is scary if you're going to leave it the way it is.

The Chair: Can I suggest we move on? Let's move on, please. There's no agreement on that. Item 19. Oh, I see, same problem.

Mr Murphy: It's the same thing.

Mr Jackson: I was overruled.

The Chair: The same questions are raised there. Item 20.

Mr Jackson: "Victims and crown attorneys" or "crown prosecutors"? We're staying with "crown prosecutors" to describe them?

Mr Winninger: We're on 20 now?

The Chair: Yes.

Mr Jackson: Why are we saying "standardized victim impact statement program"? It's a standardized victim impact statement. We don't have standardized victim impact statements in Ontario.

The Chair: Mr Jackson, could you refer us again to the line or the paragraph?

Mr Jackson: Page 30, third paragraph.

The Chair: Oh, 30, I'm sorry—

Mr Jackson: Am I on the right page?

The Chair: On recommendation 20, page 29.

Mr Jackson: I'm sorry, I thought I heard you say, "Page 29, there was no problems."

The Chair: That's item 19. That was the same problem as item 18, so then we moved on to number 20.

Mr Jackson: Right, and you asked if there were any problems and there was nothing, so I turned the page.

The Chair: Oh, I see.

Mr Jackson: I didn't hear anything.

The Chair: Is that okay then? Okay, fine.

Mr Jackson: You told me we had 14 minutes. I'm trying to move as fast as I can.

The Chair: You're absolutely right.

Mr Jackson: "Standardized victim impact statement program." I thought she announced a standardized victim impact statement; in other words, the drafting of a victim impact statement. That's not a program; that's a form with common usage and language throughout the province. It's one too many words—

Mr Murphy: First sentence of the third paragraph, page 30.

Mr Jackson: —unless she did mean a full-blown program of access. I'm not sure.

Mr Winninger: Let me just check the wording on that.

Mr Jackson: I know what the deputy told us. I'm going to insist that "announced her government's intention to introduce a standardized victim...." The reason I say that is—

Interjection.

Mr Jackson: No, that's fine. I want to say that on the victims' fine surcharge and the standardized victim impact statement, they were both announced with timetables by the previous Attorney General. I will accept that it's been announced, an intention, but I can't accept constantly making announcements as though they've happened, because that's clearly been demonstrated in one of the reports before us.

Mr Winninger: The word "program" was used because it went province-wide, but I'm told that the word "program" is neither here nor there. If you want to delete it, it won't make any difference.

Mr Murphy: So it's "standardized victim impact statement."

Mr Winninger: Right.

Mr Jackson: "A standardized victim impact statement will be introduced"—

Mr McNaught: "Form."

Mr Jackson: "...form will be introduced in Ontario." "The Attorney General announced her government's intention to introduce...."

Mr Winninger: Just to be accurate, you may have heard us say last week that it's now been introduced. At the time the announcement was made it hadn't yet been, so I think, not to mislead the readers of this report, it has been introduced.

Mr Jackson: I asked you to bring that in writing.

Mr Winninger: I think that was referred to Susan Lee that day.

Mr Jackson: Yes, because my call to the ministry was, "Who's working on it?" and they said, "We haven't begun it." I'm delighted that you've been able to get this done on short notice, but I'd like to see the standardized—and the memo that this is to be implemented. Otherwise, it is her government's intention to introduce a standardized victim impact statement for introduction in Ontario.

The Chair: We have eight minutes left. We can get a sense of whether there's agreement on some of these and then recess to discuss how we deal with the remaining items. Can we quickly run through this on page 31? If there's disagreement, we'll just move on.

Mr Murphy: Let's go straight to the recommendation.

The Chair: Straight to the recommendation on page 32. There are only about seven minutes left.

Mr Winninger: I think we may find ourselves with substantial disagreement on this one. I raised last day the concern with the Freedom of Information and Protection of Privacy Act. Any provision that we include in this recommendation has to be couched in that phraseology.

Also, we need to be clear that some victims don't want to hear anything more of the offender before, during or

after trial if they can help it. There's no point imposing an obligation on the crown and later on the correctional facility to notify a victim unless they've indicated a desire to be contacted. It may also be too great a duty on the correctional service long after the trial to be able to hunt down and locate every single victim.

Mr Jackson: Mr Chairman, I thought we were going to get votes on these.

The Chair: Okay, fine.

Mr Jackson: What is the intention of the government on this?

The Chair: I think he's saying there's a lot of disagreement on this item.

Mr Jackson: Then how do you propose to deal with it? Are we going to vote on it?

The Chair: We move on to the other items to see if there's agreement, because I want to recess in a minute to discuss how we deal with the other items that have not been dealt with, and we only have six minutes.

Item 22, disagreement or agreement? Page 33. Is there disagreement on this item?

Mr Winninger: I think there is. I think that's within the discretion of the judge sentencing to determine whether there should be association or not pending trial.

The Chair: All right.

Mr Winninger: Sorry, not on sentencing at this point, it's just pending release.

The Chair: Let's not debate that. We're coming close to five minutes. Page 35, item 23.

Mr Jackson: Just a minute, Mr Chairman. I raised the issue that it's not the committee's view that the bill of rights has symbolic value. That has been—no, I'm sorry. I know we're dealing with recommendations. This is a substantive indictment of the victims' bill of rights. If we're going to not make a recommendation, that in fact is the recommendation, not to have a bill of rights, and it's impugning a consensus of the committee, which is far from accurate. My position is that it is in fact a form of recommendation, to the negative.

Mr Winninger: Where are you now?

Mr Jackson: I'm on page 34. I had served notice that this was of such importance that it be dealt with by a vote and that the wording be changed. In the opinion of the government members it was not supportable, but I

couldn't live with the notion that the committee held the view that these were of symbolic value.

The Chair: I'm sorry. There are only four minutes left. Can we recess for approximately 10 minutes?

Mr Jackson: I'm going to just table wording for consideration during the recess of the Coroners Act amendment as suggested by four of the deputants before the committee. I've written it for inclusion in the report. I did serve notice four weeks ago that I felt this should fall in the miscellaneous section.

The Chair: All right.

Mr Murphy: Briefly, I had made a recommendation which I thought had been agreed to to include wording making reference to Dianne Poole's bill relating to serial killer cards and other things, and that's not in here.

The Chair: In the same section?

Mr Jackson: Under miscellaneous.

Mr Murphy: Yes, under miscellaneous.

The Chair: We have three minutes. Let's recess for 10 minutes and discuss how we're going to deal with this report, all right?

Mr Murphy: Agreed.

The committee recessed from 1720 to 1747.

The Chair: There's been consensus by all members to refer this matter to the subcommittee for its consideration and finalization of the report and that it will come back to the committee for a final decision.

SUBCOMMITTEE REPORT

The Chair: On another matter, with respect to the subcommittee that we've had, I'd like to simply approve this report. I think we're passing that around. Madam Clerk, should we just read this into the record?

Clerk Pro Tem (Ms Lynn Mellor): No, just ask for instruction.

Mr Murphy: Is this agreed?

The Chair: This has been agreed to by all parties.

Mr Murphy: By subcommittee?

The Chair: In subcommittee. Once you've looked at that, all I need is a motion to adopt the report. Mr Murphy? Motion to adopt the subcommittee report? All in favour? That carries. This committee is adjourned.

The committee adjourned at 1748.

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- ***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- Akande, Zanana L. (St Andrew-St Patrick ND)
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- *Murphy, Tim (St George-St David L)
- Tilson, David (Dufferin-Peel PC)
- *Winner, David (London South/-Sud ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Dadamo, George (Windsor-Sandwich ND) for Ms Harrington
Fletcher, Derek (Guelph ND) for Ms Akande
Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson
Klopp, Paul (Huron ND) for Mr Bisson

Clerk pro tem / Greffière par intérim: Mellor, Lynn

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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**Assemblée législative
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Troisième session, 35^e législature

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of Debates
(Hansard)**

Tuesday 26 April 1994

**Journal
des débats
(Hansard)**

Mardi 26 avril 1994



**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Liquor Control
Amendment Act, 1993

Loi de 1993 modifiant la Loi
sur les alcools

Chair: Rosario Marchese
Clerk: Donna Bryce

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Tuesday 26 April 1994

Mardi 26 avril 1994

The committee met at 1543 in committee room 1.

LIQUOR CONTROL AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LES ALCOOLS

Consideration of Bill 113, An Act to amend the Liquor Control Act / Projet de loi 113, Loi modifiant la Loi sur les alcools.

MINISTRY OF CONSUMER
AND COMMERCIAL RELATIONS

The Chair (Mr Rosario Marchese): Today we'll be dealing with Bill 113, An Act to amend the Liquor Control Act. Given that we have enough representation from all three parties and that the ministry staff are here, we'd like to begin. I'd like to welcome all three of you. Angela, nice to see you.

Ms Angela Longo: Nice to see you.

The Chair: Ms Angela Longo, Mr Doug Mander and Mr Don Bourgeois, welcome. We have approximately an hour for you to make the presentation to us.

Ms Longo: I won't talk for an hour, though; I promise.

As stated by the minister when she introduced the bill, the primary purpose of Bill 113 relates to Ontario's trade obligations under the General Agreement on Tariffs and Trade.

During negotiations last year on the beer trade issue, Ontario committed to passing legislative amendments which would give the government the ability to ensure national treatment for imported products at the Brewers Retail or Beer Store system.

To that end, the regulatory amendments before you expand the Lieutenant Governor's regulation-making jurisdiction under the Liquor Control Act, section 8, and clarify the Liquor Control Board of Ontario's ability to set terms and conditions with respect to store authorizations, liquor delivery and warehousing.

The legislative amendments before you will be followed by regulations requiring Brewers Retail to give imported beer national treatment.

Negotiations with the United States were difficult. Last August, Canada and the US were able to agree to a memorandum of understanding on provincial beer practices. The memorandum included an annex on Ontario practices, which opened up the beer stores to imported beer by September 30, 1993.

Since that time, Brewers Retail has accepted imported beer, subject to the terms of the agreement, on a voluntary basis. However, these amendments today are necessary

to ensure the province can guarantee the MOU's conditions in the long term and also to give the government the power to investigate to ensure compliance.

We would emphasize here that it is not that Brewers Retail Inc is not providing national treatment. On the contrary, the domestic beer industry and its unions have worked very closely with us during the trade negotiations. They also worked closely with us in developing changes to our policies, which are consistent with the GATT.

Throughout this process, we have received generally outstanding cooperation from BRI, the beer industry in general and its workers, but from a GATT perspective the final responsibility for ensuring national treatment rests with the province, not Brewers Retail, so we have to proceed with this legislation even though we are reasonably sure BRI will continue to honour the agreement with the United States. This means not just passing a regulation with respect to national treatment, but also showing that we can ensure compliance. That is where the inspection powers come in. We have to be able to indicate we can deliver national treatment throughout the whole distribution and retail system, which also includes access to licensees.

There was concern expressed in the Legislature that the beer deal was on shaky ground and a request for an update on its current status. Canada and the United States have been discussing beer issues recently, but those discussions have not involved Ontario or Ontario practices.

As I stated earlier, the earlier agreement with the United States included an annex related to Ontario practices and spelled out in some detail how it would work, but it did not contain much detail on other provincial government practices. The recent discussions this winter with the United States have focused on implementation policies in other provinces, particularly Quebec and British Columbia. While those negotiations are not quite complete, I think both the United States and our federal government hope soon to have a resolution of outstanding issues, and hopefully we'll have a continuation of peace in the beer wars this summer.

From Ontario's perspective, we are living up to our trade commitments. The further good faith associated with the passage of this legislation will be a sign to our foreign trading partners that Ontario is committed to the changes which have been made. Some concerns were also expressed in the Legislature that Ontario is not treating out-of-province beer better than it treats foreign beer. Unfortunately, this request would be a violation of national treatment provisions found under the GATT. We are treating out-of-province beer exactly the same as out-

of-country beer. I should point out that the beverage alcohol sector is only one of the 11 sectors currently under discussion in negotiations concerning the Canadian internal trade agreement which is scheduled for completion at the end of June 1994. So we are talking with other provinces on the issue of interprovincial trade in beverage alcohol products. Hopefully, we will have an agreement by June 30.

I can say that Ontario is one of the most open beer markets in the country. We were the first province west of the Maritimes to have Moosehead beer available and it has been selling in our stores for nearly two years now. No other out-of-province brewers have formally requested access to the Ontario beer store system. We feel we are offering pretty good treatment to out-of-province beer now, but the amendments contained in this bill, just as they paved the way for ensuring national treatment for imported beer, will strengthen Ontario's ability to ensure that out-of-province beer is treated fairly.

I know that there were a number of concerns raised in the Legislature about the inspection powers contained in the bill and I'd like to talk about this aspect of the amendments for a few minutes. Don Bourgeois, our legal counsel, will answer any detailed questions you have about these clauses. I'd like to address the policy intent of those powers and touch on some of the issues raised.

As I mentioned, the inspection powers relate to the general policy intent of the bill, which is to broaden the LCBO's authority and regulation-making power under the act to ensure national treatment for imported products. Part of passing a regulation with respect to national treatment includes the ability to enforce or ensure compliance. To do that, we need the ability to track the transactions throughout the beverage alcohol and retail system. This is particularly true in the case of beer, where we have a third party, the BRI, which sells most of the beer in the province.

Given that beverage alcohol products are moving through private channels in a number of instances in Ontario, some inspection powers are necessary. We do have some inspection powers under the Liquor Licence Act already, but they are specific to the LLA requirements. We did not feel they were broad enough to be used effectively with respect to the national treatment requirement. The LCA inspection powers, on the other hand, have been broadened to cover the Liquor Licence Act and the Wine Content Act, because one requires a fairly broad jurisdiction in determining compliance with a requirement as general as national treatment.

The other aspect of the regulatory framework which required this is that in some cases, certain issues which for domestic manufacturers are dealt with under one piece of legislation may be for foreign manufacturers dealt with under a different piece of legislation. Giving the Liquor Control Act inspectors broad authority under all three acts means the regulatory requirements can be dealt with efficiently by one body. Liquor Licence Act inspectors will continue their regular functions, but issues with respect to national treatment will be handled by the liquor control board.

Some concerns were also expressed by the Ontario

Restaurant Association and the Ontario Hotel and Motel Association concerning double inspections and inspections of restaurants by the LCBO. I trust these groups will be able to speak to their concerns on this issue. But we'd simply like to say that it's not the intent of these clauses to have the LCBO repeating the work currently done by liquor licence board inspectors. We will not have duplicate inspections.

We have offered to consult with the Ontario Restaurant Association and the Ontario Hotel and Motel Association on a memorandum of understanding concerning the inspections between the LLBO, the LCBO and the ministry, to avoid any problems associated with double inspections and deal with other potential concerns. We think it's more appropriate to address their concerns through this kind of practical memorandum than by attempting changes in the legislation. Our legal advice is that it's very difficult to draw the line in legislative terms.

The inspection powers contained in these amendments may also have some benefits with respect to smuggling issues and illegal liquor manufacturing. Having broad inspection jurisdiction gives the LCBO greater flexibility in investigating smuggling-related issues, and should allow it to focus its resources in this area a little more efficiently.

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Concerns were also expressed in the Legislature about the possible search of resident premises without a warrant. Our legal advice is that this is generally not possible under the amendments as worded. Inspectors can only enter premises where liquor is sold, served, manufactured or stored, or premises at which books or records related to liquor sales are kept or are required to be kept. If a licensee takes some records home on the weekend, it does not in most instances give a liquor inspector the right without consent to enter those premises without a warrant.

In practice, if a bar owner keep records at home, the liquor inspector simply makes a request to have them available at the licensed establishment at a particular time. It's the accepted practice for random or routine inspections to examine the records on the business premises.

With respect to the timing on the return of seized documents, which was also an issue raised in the Legislature, we think it is simply sound regulatory practice to do this as quickly as possible. The amendments do require that an inspector who takes documents to copy promptly return those documents. This places an onus for reasonable behaviour on the inspector.

The problem with the specific time frame is that what constitutes a reasonable time frame will vary with the amount and type of documentation. Circumstances can vary widely from case to case, and what is a reasonable time for copying and return will vary as well.

There are also some other issues which have been raised which do not relate directly to the substance of the legislation, but I wanted to just touch on them briefly.

The Ontario Restaurant Association raised an issue with respect to the interpretation of minimum pricing

policy on beer as it relates to transactions between Brewers Retail outlets and licensees. This is an issue which we are reviewing with the ORA. This is not a policy change which will require an amendment to the LCA. The Liquor Control Board of Ontario already has the power to set minimum prices and we feel a legislative amendment may reduce the board's flexibility in dealing with minimum pricing issues. In the last few years, we've required some flexibility in dealing with those issues. We think that factors such as trade issues and potential marketplace changes make it necessary to retain that flexibility.

In addition to that, the other aspect is that there may be some implications for other industries in the beverage alcohol sector which have to be consulted. We will be talking to all those people in the consultation process.

A final issue which was raised by some members during second reading was that of the environmental levy. I'd like to say that no amendments to the Liquor Control Act are required to amend the environmental levy, although amendments to the Liquor Licence Act regulations would be required.

The opinion has been expressed that the levy was discriminatory and a tax on US beer cans. The levy, of course, has not been without its share of controversy. A number of times, we offered as a ministry to defer the issue of the levy to GATT for arbitration during our dispute with the US. The US declined to accept these offers but also accepted the levy as part of the trade package once the beer dispute was settled. We feel that supports our position.

The rationale behind the levy's introduction was that it was felt very strongly that in the absence of a policy which encouraged refillable bottles, domestic beer producers would over the next five to 10 years convert primarily to can production. This would have meant as a result that the excellent product stewardship exhibited by the current Brewers Retail system would be jeopardized.

The domestic beer industry during the 1980s began the drift to cans from refillable bottles. In 1983, 99% of packaged beer was sold in refillable bottles. By 1992, that percentage was down to 78% and cans, which had been 1%, were up to 22%. The levy has been extremely successful in reversing that trend. Refillable bottles now represent packaging for 91% of the domestic packaged beer market. So we regard the levy as very successful.

The bottom line on the environmental levy is that we have a system at Brewers Retail which has been strongly supported by the industry, the unions and the public. It involves very little in the way of waste management costs to the government and it has been fair to all suppliers.

The final issue I should mention with respect to the bill is that these changes will allow the LCBO to authorize onsite stores for manufacturers to sell their own products. As most of you may know, wineries and breweries in the province have had that privilege for some time. It's been a very successful tourism-related initiative, particularly in the Niagara region. These amendments give distillers the same ability. It will put them on an equal footing with wineries and breweries in that regard.

Thank you for the opportunity to make these remarks. Both my colleagues and I will be happy to answer any questions.

Mr Robert Chiarelli (Ottawa West): When I go through the bill and I hear your presentation, I obviously get an overview, which you would normally expect from a senior policy analyst or a counsel from a legal branch or a director, agency relations branch, but I'm trying to get a handle on how the bill is actually going to work on the ground. If I have to go out and talk to the owner of a restaurant or another establishment that's licensed and I have to tell them what this bill means, I'm not sure what I should be telling them.

In other words, when I look at the explanatory note and the words of the act where it says the bill also provides for inspections of premises "at which liquor is sold, served, manufactured, kept or stored" for the purpose of ensuring compliance with applicable legislation, I'm not sure if the explanatory note and the sections of the bill are simply arming the government so that it has the authority if it needs it, or if indeed there is a government policy which says, "We are proactively going to appoint inspectors and do inspections in order to be ready for a complaint should one arise."

To get more specific with my question, how many inspectors do you contemplate appointing and/or how many inspectors in the field now will be given instructions to try to get compliance with this bill? Do you have any idea of numbers? Anybody can answer it.

Ms Longo: We don't have at this time any intention of appointing new inspectors for these purposes. The liquor control board has, I think, six inspectors at this time who cover a whole range of duties.

Mr Chiarelli: So they would be authorized under this particular legislation to do inspections, by order-in-council? If you have an inspector in place now—when I look at the bill here, it says, "The chair of the board may designate any person as an inspector to carry out inspections for the purpose of determining whether there is compliance with this act." You obviously have new legislative authority to appoint inspectors. Who are you going to be appointing?

Mr Don Bourgeois: The chair presumably would be appointing those individuals who are currently employed by the liquor control board and who do conduct some inspections pursuant to the existing legislation.

Mr Chiarelli: Why did you need a new bill?

Mr Bourgeois: With respect to the inspections generally?

Mr Chiarelli: Yes.

Mr Bourgeois: The inspectors have powers under the Wine Content Act, for example, to conduct audits with respect to wineries. Those inspectors do not have the statutory authority to enter the premises of Brewers Retail, for example, nor do they have the statutory authority to enter the premises of the manufacturers.

Mr Chiarelli: Given the nature of inspections that inspectors can do now and given the rationale for this legislation—in order to comply with GATT—what will be done differently by inspectors who are authorized

under this legislation on a proactive basis? What will they be looking for?

Mr Bourgeois: They'll be looking for assurance that national treatment is accorded to foreign manufacturers selling beer through the LCBO onwards to you or me.

Mr Chiarelli: Could you give me a specific example of what they'd be looking for and what a contravention would be?

Mr Bourgeois: For example, the cost of service, to ensure that the cost of service that's set out in the appendix to the—

Mr Chiarelli: Sorry, I didn't hear that. What service?

Mr Bourgeois: The cost of service. There is in the appendix to the beer trade agreement a schedule setting out cost of service; for example, how much it will cost for delivery from a BRI store, how much per pallet for handling of the beer within the BRI and so forth. The inspectors would be able to demonstrate or ensure that there is compliance by conducting the inspections—

Mr Chiarelli: What is a BRI store?

Mr Bourgeois: Brewers Retail.

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Mr Chiarelli: How will this impact on a restaurateur?

Mr Bourgeois: In all likelihood, in the normal course, I would not anticipate that there would be a substantially significant number of inspections conducted on a regular basis by LCBO inspectors of licensees. That authority is necessary, however, in order to be able to track the beer itself or the wine or the spirits or any other product.

Mr Chiarelli: In terms of complying with the GATT provisions, is it your opinion that you have to have an inspection infrastructure available if there's a complaint, or is there an obligation to proactively inspect to ensure compliance on an ongoing basis?

Mr Bourgeois: I think probably the best bet for anybody in an international trade situation is to prevent complaints from arising and one method of preventing complaints from arising is to be able to demonstrate very quickly that there has been compliance and continues to be compliance.

Mr Chiarelli: Let's sort of flip it around a bit and put myself hypothetically in the place of Moe Attalah, who runs the Newport Restaurant in my riding of Ottawa West. He asks me, "What does this bill mean for me?" What should I tell him?

Mr Bourgeois: In all likelihood, for him, as an individual licensee, there probably will be very little impact upon him.

Mr Chiarelli: To the extent that there's little impact, what would that little impact be?

Mr Bourgeois: If there's a requirement to be able to track the beer as part of law enforcement and to ensure that there has been compliance by Brewers Retail or, in the case of wine, by a winery retail store, which is also a government store, there may be a request to look at books and records related to a particular transaction. But I don't anticipate that there would be a regular impact upon any of the licensees.

It's similar to the type of routine inspection powers

that the ministry has under the Real Estate and Business Brokers Act, for example, or the Travel Industry Act. Most travel agents on a day-to-day basis will not come across a ministry inspector. They will occur and there are some routine inspections done on a set policy basis, but for the most part, most people aren't bothered by the inspectors.

Mr Chiarelli: Presumably, as you indicated, additional authority will be given to existing inspectors. Will they, as a matter of course in their responsibilities, be asked to monitor on a daily basis the requirements of GATT or the instructions from the chair with respect to monitoring GATT, or will they be receiving more specific, targeted instructions?

Mr Bourgeois: I'm not sure I could answer that question because that's part of an enforcement policy that I haven't been part of in the development.

Mr Chiarelli: But it's possible under this legislation that all existing inspectors could be authorized to regularly look for and report on provisions of concern under GATT?

Mr Bourgeois: Liquor control board inspectors?

Mr Chiarelli: Yes.

Mr Bourgeois: Again, it depends upon what enforcement policy is decided upon.

Mr Chiarelli: If there are people on the ground out there running businesses, they should have some understanding or there should be some government communications policy at the present time which says to these people, "This is what you can inspect." I gather, from what you're telling me, that we're arming some inspectors here with power but we don't know what we're going to tell them to do with that power at this point.

Mr Bourgeois: No, I don't think that's what I mean to be saying. What I mean to be saying is that in the development of an enforcement policy which the liquor control board, once this—and assuming this legislation is passed, they will develop an enforcement policy and, based upon the resources that they have available, they can make a determination, presumably in consultation with others, as to what is the best approach to ensure that there is compliance throughout the system with national treatment and other international requirements and, at the same time, to be able to demonstrate that should it be necessary.

Mr Chiarelli: I guess one of the things I'm concerned about is the enforcement aspect of it, the extent to which these inspection powers might end up being considered, rightly or wrongly, by some people as harassment or additional red tape. I know that you've probably heard a lot of comment from people who run small businesses across the country and the province about the nature of doing business these days, particularly with red tape, inspections etc. Is there any additional red tape or any additional work required for small businesses to deal with the inspections?

Mr Bourgeois: No, I wouldn't anticipate that there would be any. The regular liquor licensing inspections will continue, of course, and that's based upon an enforcement policy that the liquor licence board has,

based upon a risk management. But the average restaurant owner probably will not see one of these liquor control inspectors. It's only there should it be necessary in order to be able to ensure compliance with GATT requirements and to be able to demonstrate it.

Mr Chiarelli: Is there any particular concern from any other countries, other than the United States, at the present time vis-à-vis our compliance with GATT?

Ms Longo: The European Community was party to this too, but it has the same access under the MOU that we gave to the US when we did the deal last year. We've applied it to everybody.

Mr Chiarelli: There seems to be a sense that we're responding more to the Americans than to other countries. Is that a proper perception?

Ms Longo: That's what the MOU was about last year, because we had essentially what you would call a trade war. They had tariffs against us and we had tariffs against them, as two nations, because they weren't satisfied with the way we were handling beer. We came to a commercial negotiation and resolved it through the MOU, and we extended the process, then, to all of our trading partners. It would apply to any other trading partner; there just haven't been any others so far in beer.

Mr Chiarelli: So we're responding basically to the Americans with it.

Ms Longo: Yes.

Mr Charles Harnick (Willowdale): I have a brief question, and it really relates to the inspection issues.

When I first came to this place I saw all these bills. Anybody who's called an inspector can just walk right in; nobody needs warrants any more. I gather that appears to be the way of the world, not just in this act but in a number of other acts. So I really can't complain about that any more, as I used to, because it's fighting a losing battle.

But this act goes one step further in that if you take a look at section 4.5 on page 5 of the bill, subsection (3), where they talk about the answers that someone who is being inspected must give, when I get to subsection (3) it says, "An answer given by a person mentioned in subsection (2) may be given orally or in writing and, if the inspector so requires, the answer shall be given on oath." That's extraordinary.

All of a sudden we're going to hire people and we're going to send them out with a Bible, and they're going to go in and ask people who own and run restaurants questions about the liquor that they've purchased and that they're serving. Then they're going to say to them: "Here's the Bible. We want you to swear on the Bible before you give your answer." That's absolutely outrageous.

I quite frankly have not seen this in any bill that the government has produced since I've been here. I've seen these outrageous inspections where you don't need warrants and you don't have to announce that you're coming, and that's the way of the world today, but this issue of having some person all of a sudden elevated not just to the position of inspector but they become judge and jury as well as executioner and they start asking for answers

under oath is rather extraordinary. I wonder if you might give me your impression about that. Why is it there?

Mr Bourgeois: There's also another ministry legislation, a similar provision for investigators, for example in legislation that dates back to the 1960s and 1950s in the Real Estate and Business Brokers Act and other statutes in which an investigator has the authority to the Public Inquiries Act. It is comparable to those sections as well in which an investigator conducting an investigation under one of those statutes, like the Real Estate and Business Brokers Act, the Travel Industry Act and so forth, can require people to give similar information.

Mr Harnick: Police officers investigate, I suppose, by comparison, far more serious issues than what liquor inspectors are going to be investigating. Don't you find it rather intimidating that the way this is worded, someone can be running a restaurant and then be told: "I'm an inspector. Here's the Bible. Swear under oath, and I want to hear your answer"?

The Chair: We're actually going to have to go and vote, so rather than having you complete that thought, you'll complete it after the recess is over.

The committee recessed from 1612 to 1632.

The Chair: We'll move straight to Mr Duignan. When Mr Harnick comes back, we'll simply get back to him to finish his question and get the answer.

Mr Noel Duignan (Halton North): I just have a couple of points of clarification around the whole question of allowing on-site stores and distilleries in the province.

Clause 2(1)(e) states, "to authorize manufacturers of beer and spirits and wineries that manufacture Ontario wine to sell their beer, spirits or Ontario wine in stores owned and operated by the manufacturer...." Does that mean, for example, that Hiram Walker could sell other products that are not manufactured on that particular site in that retail store?

Mr Doug Mander: We're currently reviewing the criteria and conditions upon which we'll authorize the on-site distillery stores. That's something we're looking at in consultation with the LCBO and the distilling industry and haven't quite finalized, but we'll do so in the very near future.

Mr Duignan: That would also include whether these on-site stores could open on Sunday, for example, and use credit cards or debit cards in their particular stores?

Mr Mander: Yes. All those would be included in terms of the review. On the Sunday issue, the precedent in the other areas—it's probably going to hold true for the distillery stores as well, but we haven't made a final determination. Right now the on-site stores for wineries and breweries are open on Sundays subject to municipal approval.

Mr Duignan: For example, I don't know whether Kittling Ridge Estate Distillery plans to also sell wine or sell wine on the site. For example, they could have wine being sold on Sunday and the distillery part closed on Sunday, allowing use of credit cards on the wine aspect but not on the distillery aspect of it. Hopefully, we won't get into that type of situation.

Mr Mander: Yes. We'll try to keep things consistent with the operation of the stores in the other industries.

Mr Duignan: Any idea when those decisions will be made?

Ms Longo: Hopefully later this spring, depending on passage of the bill.

Mr Duignan: Okay. I don't have any more questions.

The Chair: We're going to see if Mr Harnick is on his way back. If he is, we'll finish with his question. If not, we'll simply go on. We'll just wait a few seconds.

Mr Chiarelli: Maybe we could just stand down his time, and if he comes back, we'll give him his time.

The Chair: You're staying around?

Ms Longo: We'll stay.

The Chair: Very well, that's what we'll do then. We thank you for your presentation and we'll probably have you back very shortly.

KITTLING RIDGE ESTATE DISTILLERY

The Chair: Mr Hall from Kittling Ridge Estate Distillery, welcome. We have a half an hour for your presentation. I suggest you leave time for questions.

Mr John Hall: Good afternoon, Mr Chairman and honourable members of the standing committee on administration of justice. I would like to thank you for providing me with the opportunity to address you this afternoon regarding Bill 113, An Act to amend the Liquor Control Act.

I am speaking today on behalf of Kittling Ridge Estate Distillery, with the support of the Association of Canadian Distillers. I also have the full support of my industry colleagues from Hiram Walker Distillery, who are in attendance today.

First of all, I would like to briefly introduce myself and my company. My name is John Hall. I am president and CEO and a shareholder of Kittling Ridge Estate Distillery, located in Grimsby, Ontario, which was previously known as Rieder Distillery prior to my involvement with that company.

I am a member of the board of directors for the Association of Canadian Distillers. As well, I am a member of the board of directors of the Wine Council of Ontario. While past chairmen of that board developed and launched the highly successful Ontario wine industry campaign "From the wine regions of Ontario, we're ready when you are," I have over 25 years of domestic beverage alcohol industry experience.

Our company, Kittling Ridge Estate Distillery, is the only Canadian-owned distillery left in Ontario. We utilize Ontario-grown cherries, peaches, plums, apples, pears, strawberries, raspberries and grapes. While considered a small business, we presently employ 40 people in the Niagara community and can be considered a significant contributor to the peninsula, the Niagara fruit growers and the economy.

While comparing ourselves to the wineries in Ontario, our economic influence would be similar to that of Inniskillin winery or Hillebrand winery, placing us in the midsize range, except that our product is distilled spirits, which are primarily made from Ontario-grown fruit, and

we utilize a significantly broader range of Ontario-grown tender fruit than the wineries do.

Over the past 24 months, we have been repositioning our company as a small estate distillery, producing unique spirits from Ontario-grown fruit. We believe our role as an estate distiller can be extremely effective. The industry enhancement that has occurred in both the Ontario wine and beer sectors by cottage wineries and micro-breweries can be replicated in the Ontario spirits industry. But in order for this enhancement to occur, we need the same level playing field. We need the same tool and the same opportunity that is enjoyed by Ontario wineries and breweries, that being a retail store at the manufacturing site.

Bill 113 addresses this discriminatory practice and provides us with the opportunity towards a more level playing field; an opportunity that will benefit the entire spirits industry; an opportunity that is one small step in the right direction for industry recovery and growth; an opportunity to create more jobs; an opportunity to purchase more Ontario-grown fruit and grain; and an opportunity to facilitate tourism enhancement and promote responsible use of our Ontario-made products. Bill 113 will assist us to contribute more to the Ontario economy.

I am here today to support Bill 113, which will provide us with the opportunity to operate an onsite retail store. I am also here to urge you to instruct the government of Ontario to move as quickly as possible to receive royal assent for Bill 113 and, once received, instruct our regulators to ensure the regulations applied to an onsite store are non-discriminatory. A regulatory model already exists and is operating very successfully for Ontario winery stores. The same regulatory model can be used. The Ontario distillery stores should operate under the same conditions.

1640

Our business at Kittling Ridge can be considered a full-cycle model or a closed loop, one that is unique and rare in these times. It is one of the only businesses I know that provides real value to the Ontario community.

First of all, Ontario farmers grow the fruit and grain. We buy the fruit and grain from the Ontario farmers. We employ Ontario people to process, ferment, distil, age, blend and bottle the product. We utilize, wherever possible, Ontario-made labels, caps, cartons and bottles. The finished product is then distributed and sold to consumers, and then the entire cycle begins again with the Ontario farmers. As well, there is an added benefit. The governments of Ontario and Canada reap 83% of the value of our retail price on each bottle sold.

This fragile loop must not be broken. Our industry must be provided with the same opportunities and non-discriminatory regulations that exist for Ontario wineries and breweries.

Many of the Ontario wineries and micro-breweries survive and grow because they have an onsite retail store. It is legal for them to make their product and it is legal for them to sell their product from their manufacturing store. Presently, it is legal for us to make our product but

it is illegal for us to sell it in the same manner.

At Kittling Ridge many of our products are unique, just like many of the products produced by the cottage wineries. These products can be considered niche products and do not receive LCBO full-store distribution, and in some cases none at all. Even though the LCBO is extremely cooperative with us, there are over 600 stores in the province and some of our products will not sell that much in any given year. Consequently, we have fine-quality products made and bottled, but nowhere to sell them.

Many consumers in Ontario do not know that our brandy is the only brandy made in Canada and the only brandy made with Ontario grapes. Many consumers in Ontario do not know what an eau-de-vie is. We, as Canada's only eau-de-vie and brandy producer, have won international acclaim by winning many world gold, silver and bronze medals from such prestigious competitions as the Monde Sélection, the premier of all world taste competitions.

Our brandies and eaux-de-vie have won Europe's highest honours. It takes 30 pounds of Ontario grapes to make one bottle of Ontario brandy, it takes 16 pounds of Ontario cherries to make one bottle of Ontario kirsch, it takes 15 pounds of Ontario pears to make one bottle of pear brandy and it takes about 20 pounds of Ontario grain to make one bottle of Canadian whisky.

Over two thirds of our products that we make in Grimsby, Ontario, are not sold in Ontario, and we have to say to our Ontario consumers who eagerly want to buy our specialty products, "Sorry, you cannot buy them."

Many consumers in Ontario do not know how to use and responsibly enjoy our products. With the passage of Bill 113, our Ontario industry will have the same opportunity afforded to Ontario wineries. Ontario consumers will be able to tour our distillery, attend our cooking demonstrations, learn how to use our products responsibly and begin to appreciate the art of distillation.

Research has proven that if a potential customer tours our facility, they will be more knowledgeable about our products, they will learn how to use our products responsibly, and when they return home, they will begin to create a demand for our products in their local LCBO stores.

We have repositioned as an estate distiller, just the same as a cottage winery or a micro-brewery, but we are unable to benefit from our new direction without the ability to market our line of estate spirit products in a similar onsite fashion.

With the onset of yet another tourist season—one key season has already been lost since this legislation was first introduced one and a half years ago—we are unable to provide our customers with a full educational picture of our unique presence in the Niagara region.

It is critical for us, as the last remaining small Canadian-owned distillery in Ontario, and indeed it is critical for the entire industry to be able to utilize an onsite retail store to market our spirits with the opportunity to enhance the distilling industry in Ontario, provide additional sales in LCBO stores, increase employment

and positively impact tourism and agriculture in the Niagara region.

In the past 10 years 17 distillers have closed down in Canada. Seven distillers have closed in Ontario alone, with a loss of 1,500 Ontario jobs. We do not want to be the eighth in Ontario, nor do we want to be the 18th in Canada.

We have the support of the government of Ontario, all three political parties, the LCBO, the distilling industry and the fruit growers of Niagara. On behalf of Kittling Ridge, the entire Association of Canadian Distillers and all of our supporters, I request your support in this initiative and request your expertise with the government to quickly expedite passage of this bill in order that we may quickly implement an onsite store to begin enhancing our new position with the Ontario tourist and customer.

Over the past few years Ontario wineries have flourished, in part because of their onsite retail activities. We can flourish as well with the government allowing us the same opportunity. The passing of Bill 113 and the establishment of operating policies similar to those applied to Ontario wineries and breweries will be a welcome and positive step towards the levelling of the playing field. All we are asking for is fair and equal treatment.

Would you please instruct the government of Ontario to move as quickly as possible to receive royal assent for Bill 113 and ask the regulators to act quickly and fairly to provide a non-discriminatory environment for us to operate within.

I would like to personally invite all of you to visit our distillery to appreciate the necessity of an onsite retail store. Again, I thank you for providing me with the opportunity to speak to you today and I will be pleased to answer any questions you may have.

Mr Ron Hansen (Lincoln): Mr Hall, welcome to Queen's Park. You're from Lincoln, I know, and I've met with you before. I think there's one question I'd like to ask, and I think there was some discussion. I didn't see it in your brief. You opened a wine store with a limited amount of product. What did that do to your sales in wines when you actually opened the onsite wine store?

Mr Hall: Actually, we're probably having a bit of a problem right now because we're disappointing customers. They do come to visit us and they are purchasing wine from us. We're operating under the same regulations as the Ontario wineries because we do hold an Ontario winery licence. But many of our customers are extremely disturbed that we are not allowed to offer our spirits also.

Mr Hansen: But did your wine sales increase as soon you opened your wine store?

Mr Hall: Oh, absolutely. We opened up two weeks before Christmas, and we're into our third or fourth bottling of our wine because of the retail store. Many of our customers are not only from the immediate area. We get customers that are travelling throughout Ontario.

This has been the lowest season right now. The tourist season starts in June and carries through into the fall of

the year. I suspect that we will get customers from further afield, which means that when they go back to Sudbury, London, Windsor, they'll go to their local LCBO store and they will ask for our product.

Mr Hansen: Your location is on the service road to the Queen E. I understood that you felt you would have excellent sales of your product to American tourists coming in. Is that correct?

Mr Hall: I certainly hope so, because there are a fair number of American tourists that travel up from the Buffalo and Niagara Falls area to Toronto. The QEW has a traffic pattern, I'm told, on the average of about 60,000 cars a day. The peak season obviously, again, is the tourist season. Hopefully, many of them will stop in the area, have lunch and visit and tour the distillery.

1650

Mr Chiarelli: First of all, thank you very much, Mr Hall. You're certainly a good advocate for your business and your industry. I'm sure that you feel as though you've had one hand tied behind your back to try to do business over the last little while.

One thing I would like to know from you is, while you have a captive audience here of legislators and public policymakers and while all the parties are supporting this legislation and hopefully it will pass very soon, do you have any other suggestions you might give us to assist your industry and your business?

Mr Hall: I was asked to come here today to simply speak directly to this particular issue. There are many, many other issues that are being dealt with through the Association of Canadian Distillers. I could probably go on ad infinitum on some of those. Our product is the highest-taxed product in Canada, at 83%.

So there are many other issues, but this particular issue is very dear to my heart because of the fragility of the whole Niagara Peninsula and because of the care that's given by the Niagara food farmer who is growing all of this fruit down there, whether it's the grapes or the cherries or the peaches. This issue is extremely important.

I think that all of the other issues that I know many of you may be briefed upon are extremely important also. I believe the distilling industry in Canada has a bright future, if we can begin to level the playing field. Moving quickly on Bill 113 is a very short step, but it's a step in the right direction, a beginning to level that playing field.

Mr Chiarelli: You've indicated a connection to the whole economy of your area, from the farmer to the manufacturing and so forth. Presumably you will get that multiplier effect if the industry's overall sales could be enhanced, particularly to tourists and export and people who are travelling through the province.

You mentioned almost under your breath the question of taxation. Do you have a sense that government revenue would be enhanced or at least maintained by a reduction of the taxes, by increased volume?

Mr Hall: Absolutely. When you look at a third of the market that is illegal, that are spirits being purchased through illegal channels, there is no doubt in my mind that a tremendous amount of government revenue is being lost. We're asking our potential customers to create

criminal acts. I'm very customer-oriented, and you try to treat customers with good service and good sense. We're asking our customers to commit criminal acts.

I'm also hoping that if Bill 113 passes and we are allowed to operate a distillery store at our retail site, we will be able to help educate customers too and show them the value of buying products that are made in Canada and made in Ontario. But there is no doubt that the excessive taxation is dramatically hurting the industry.

Mr Chiarelli: You heard some comments earlier when you were sitting in the audience, some concerns about inspections and additional inspectors. Do you feel that using those provisions to cut out smuggling would help the industry? Do you think they might be useful in restricting the amount of smuggling that's going on?

Mr Hall: I don't know exactly the ramifications and implications of the inspection except to say that I understand they are there to be able to provide the LCBO with additional powers. I must say that I support that 100%. We have laws in this country, and in order to implement those, people in this country should be abiding by the laws of the country.

It is certainly hurting our Canadian industry by having a third of the market being smuggled into this province. Therefore, I'm 100% in support of being able to provide the LCBO and the various regulators the tools to assist in curtailing the smuggling activity.

The Chair: Mr Hall, we ran out of time. Thank you for coming today and making this presentation to us.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

The Chair: I'd like to call Ms Longo and Mr Mander and M. Bourgeois to come back again so that Mr Harnick can complete his question.

Mr Harnick: Thank you very much. I appreciate the indulgence. My question really was, do you think it's justified that inspectors have this rather extraordinary power to accomplish what you want to accomplish?

Mr Bourgeois: The section was drafted in accordance with the accepted draft and provisions for this type of inspection power at the time. In my experience, in several years of doing prosecutions and advising inspectors and investigators and so forth, this type of provision has not been actively used, although its existence has been of assistance in some cases in conducting an investigation or an inspection.

I'm not aware of it being used by actually requiring somebody, and most, to swear an oath and so forth, and I think it's that provision that you're concerned about, not the first half of that clause—

Mr Harnick: No.

Mr Bourgeois: —if I'm correct. I'm not aware, again, of it actually being used in practice over four or five years of experience in practising law.

Mr Harnick: You'd agree with me, though, that could be pretty intimidating.

Mr Bourgeois: I'm not sure I would be in a position to agree or disagree without a fact situation presented.

Mr Harnick: I just put it to you that if an inspector

shows up on my premises, where I'm trying to run my restaurant, and says, "I have the power to make you answer me, and furthermore, to swear on the Bible that you're telling the truth," that can be a pretty intimidating thing for something that you say you've never seen cause to even use.

Mr Bourgeois: As I say, I'm not aware of it ever being used in that fashion.

Mr Harnick: I'm glad that I have the recommendations of the Ontario Restaurant Association. I now see their brief for the first time. What they say is that to a very significant degree, the investigatory powers set out in section 4 are duplications of what the Liquor Licence Act permits, and they are concerned that inspectors under the Liquor Licence Act will be inspecting their premises with virtually the same powers.

Now you are permitting another body, as I understand it, the liquor control board, to do the same thing. I can certainly see where they would be somewhat concerned about now having to deal with two different sets of inspectors who are essentially, in their eyes anyway, inspecting for the same issues. I have no doubt you've seen their brief and—

Mr Bourgeois: I haven't seen their brief, although we did meet with representatives of the Ontario Restaurant Association and the Ontario Hotel and Motel Association.

Mr Harnick: I'm a little surprised that in providing us with your brief today, or your presentation, you have not seen fit to respond to the recommendations that they make. In fact you've almost totally ignored the concerns that they have.

I think it would be incumbent upon you, now that they are here and about to give their brief, to tell us why they are wrong and you're right, so that when they come up to present their brief, they might be in a position to respond and maybe convince you that the act is too onerous with regard to the particular areas they enumerate. I wonder if you might deal with that as I think you probably should have in your initial discussion with us.

1700

Mr Bourgeois: I have only seen their brief just now, when the copy was provided to me.

Mr Harnick: But no doubt you've met with them and they've expressed all these same concerns.

Mr Bourgeois: We did meet with them, and it was mentioned at the meeting and I believe in the introductory remarks as well, if I recall correctly, that some of these issues can be dealt with through a memorandum of understanding between the ministry, the liquor control board and the liquor licence board. If it wasn't mentioned I'm raising it now: that that is the place, rather than the legislation, to deal with some of these issues.

Mr Harnick: But that's cold comfort to them if such a memorandum doesn't end up existing.

The Chair: Mr Harnick, I'm going to allow them to finish off and then we're going to have to move on.

Mr Harnick: I think it's the very least, Mr Chair, that you can do. The restaurant association certainly deserves, if it's come here and it's got all these concerns, to get a

comprehensive answer. We should spend the extra time we need so the restaurant association can then at least—

The Chair: No. Mr Harnick, we're not going to do that. You've asked your question. We're going to get whatever answer we get from the technical staff here and then we'll move on.

Mr Bourgeois: I believe it was covered in Ms Longo's presentation that we did consult with them, and what we have agreed to do is consult with them in the preparation of the memorandum of understanding to deal with those enforcement issues and the inspection powers.

As I think was indicated to Mr Chiarelli earlier, in all likelihood, the chances of any of their members being inspected by two sets of inspectors is not very great. That's not going to, in all likelihood, happen.

Ms Longo: I think the other thing I'd just add to that is that it's not intended to have double inspections, and that's why we would like to work with the agencies and with the ORA to work out a practical mechanism to make sure that's not the case.

Mr Harnick: Why don't you just accept the amendment that they've suggested and delete the Liquor Licence Act?

The Chair: Mr Harnick, I'm sorry. We're out of time.

Mr Harnick: Well, it is an important question.

The Chair: You're quite right, but we have allowed plenty of time on this. If there is anything further by way of discussions that we can have in this committee or in dealing with clause-by-clause, there's an opportunity for that for the members to discuss later.

Mr Harnick: Can I ask for unanimous consent of the committee to see if we can have that question answered?

Mr Chiarelli: Why don't we just assign to Mr Harnick the time that the government didn't use up?

Mr Harnick: Can I ask for unanimous consent?

The Chair: Is there unanimous consent on this? No. Okay, there isn't. I'd like to thank the staff from the Ministry of Consumer and Commercial Relations for their technical briefing. It was very useful, and I guess you'll be around to listen to the other presenter.

ONTARIO RESTAURANT ASSOCIATION

The Chair: I'd like to invite the Ontario Restaurant Association, Mr Paul Oliver and Ms Rachelle Solomon.

Mr Paul Oliver: Thank you. I'm Paul Oliver, president of the Ontario Restaurant Association. On behalf of the association I'd like to thank you for having the opportunity to appear before you today to discuss some of the concerns of the hospitality industry and licensee community regarding Bill 113. We're particularly pleased that the bill has been referred to this committee for thorough review and, hopefully, modification.

While supportive of many of the overriding principles of the legislation, the Ontario Restaurant Association believes that a number of fundamental changes are needed to Bill 113 before it receives third and final reading.

The concerns of the hospitality industry can generally be broken down into three distinct areas. The first one is, however, our most important and most pressing: the

expansion of the LCBO powers and overlap with existing LLBO responsibilities.

It is our association's understanding that the provisions of Bill 113 are intended to expand the powers of the liquor control board so that they mirror or reflect those powers already granted to the liquor licensing board. These pertain to entering and searching licensed establishments, the offices of licence holders and seizing corporate records.

While the ORA is concerned about the application of the search-and-seizure requirements, more importantly we're concerned about the fundamental transformation of the LCBO from a retailer of beverage alcohol in Ontario to that of a body empowered with enforcement and inspection capabilities. The ORA is concerned that granting these powers to the LCBO is a major and fundamental departure from the current as well as historical practices of regulating adult beverages in Ontario.

Relative to the licensee community, we do not see Bill 113 as minor housekeeping legislation. Instead, it represents a fundamental departure in the way we regulate Ontario's hospitality industry.

The ORA is concerned that what will be created by departing from the traditional role of the LCBO as retailer is a double regulatory burden on licensed establishments. The potential exists that a licensee will face an inspection from both the liquor control board as well as the liquor licence board coming in and inspecting for the same purposes. While we agree with the ministry that this may not be a common occurrence, we do recognize that it is a possibility and our concern is that it be addressed so that we don't have those at all.

The ORA sees that this is simply duplicating the existing regulatory services, which in turn will use up scarce resources and place an additional administrative burden on small business operators, which comprise the large majority of the licensee community. As well, Bill 113 will eliminate the clear distinction, which is very important, which exists between the liquor control board and the Liquor Licence Board of Ontario, one being a retailer and one being a regulator.

The ORA is also concerned that this departure from the traditional role for the liquor control board may in the long term gradually eliminate the need for the Liquor Licence Board of Ontario. If the current powers that reside in the liquor licence board are replicated or duplicated, the suggestion could easily be made that there is no longer a need for two separate, distinct boards. If this is truly the intention, which we don't believe it is, then the ORA would strongly urge that it simply be eliminated immediately. We don't believe that this is the goal of the government and we believe that it should be clearly reflected in legislation.

The ORA is particularly concerned that duplicating of regulatory powers will substantially increase the administrative and regulatory burden placed on the more than 14,000 small business operators who comprise the licensee community. The government of Ontario has already stated that reducing the regulatory burden on small business is a top priority. Bill 113 does not accom-

plish this task. Instead, it only enhances the already excessive regulatory burden placed on small hospitality operators.

The ORA is also concerned about the competitive implications of the liquor control board receiving these powers currently residing within the liquor licence board. Since the LLBO is not a retailer, there is not a competitive issue when it inspects licensed establishments. There are, however, competitive issues when the LCBO would be exercising those powers.

Licensees currently purchase adult beverages from the Liquor Control Board of Ontario as well as from Brewers Retail. In this relationship, Brewers Retail and the LCBO are in fact competitors. We are concerned that if the LCBO is allowed to regulate licensed establishments and inspect confidential business documents of a competitor, such as Brewers Retail, a major competitive advantage could be inherently granted to the LCBO. This situation would be similar or akin to the CRTC granting the CBC the power to inspect private broadcasting stations in Ontario. We don't believe that this would ever happen and we don't think it should happen with the adult beverage retailing sector.

The association does not see a beneficial need for expanding powers of the LCBO and anticipates many downside, negative impacts of such an action. We therefore are encouraging this committee to amend Bill 113 with the recommended changes we've included in appendix A.

We're also concerned about other provisions in this legislation. While not currently addressed in Bill 113, Bill 113 is the enabling legislation for the Canadian-American beer agreement. In previous submissions to the Minister of Consumer and Commercial Relations, the ORA has stated that the licensed community in Ontario is concerned about some of the provisions contained in the Canadian-American beer agreement and how these provisions will be interpreted and applied relative to the licensee community. In particular, our concerns revolve around the interpretation of social minimum pricing and whether licensees will be treated as consumers or retailers of beer in Ontario. We have strongly argued that licensed establishments are retailers and should be treated as such.

1710

Since Bill 113 is the enabling legislation which will allow Ontario to implement its obligations under the Canadian-American beer agreement, the ORA believes that this important issue of the interpretation of minimum pricing relative to licensed establishments should be resolved before 113 is proclaimed. We're therefore encouraging the standing committee to strongly urge the Minister of Consumer and Commercial Relations to resolve the outstanding issues relative to minimum pricing and its application to the licensee community.

Finally, the Ontario Restaurant Association believes that Bill 113 should be used by the government of Ontario as an opportunity to expand its regulatory powers to cover vendors of adult beverages in Ontario who are currently exempt from regulations. In particular, we are referring to you-brew establishments, retail wine-making and home-delivery establishments.

The ORA is extremely concerned that approximately 250 of these establishments are making adult beverages and are competing with licensed establishments. However, they are not regulated. We believe that since we seem to have extra regulatory capabilities, to the point that we are double-regulating some sections and not regulating others, those resources should be reallocated to sectors of our retail industry that are not covered.

The association believes that the power to regulate these establishments should be included within 113. At minimum, we believe that the liquor control board should be granted the power to inspect and test products that are being produced in these establishments, in particular those products which are being produced and served at major special-occasion-permit functions. Our members are extremely disturbed that there are no means by which to test wine produced in these retail establishments which is in turn served to hundreds of people at wedding receptions and social functions that are sanctioned by the liquor licence board. We therefore believe that there is a need for additional regulation of this sector.

We thank you for the opportunity of appearing here today, and in particular we draw your attention back to our first and most pressing concerns.

Ms Christel Haeck (St Catharines-Brock): I'd like to actually ask a question of the parliamentary assistant, and he might want to refer it one of the staff.

With regard to the item mentioned on page 5, number 3, the expanded responsibilities of the LCBO and the LLBO in relation to special occasion permits, as someone who represents one of the wine-growing regions, I have a number of wineries that have also brought forward some of these concerns with regard to product that might be used at, say, a wedding reception which may not comply with all of our regulations.

With regard to the testing of these products, I had made the assumption, however wrong, that the LCBO or the LLBO was in the position of making some tests if they discovered such an item. Could you correct my assumption if need be?

Mr Duignan: I know that the ministry is currently reviewing the practicality of implementing the ORA request at this particular point in time, but I would be glad to ask the ministry staff to expand on your particular question, either orally or in a written response possibly next Monday when we meet to do clause-by-clause. Or if they wish to answer it now, that would be up to them.

Ms Longo: We've had the request from the ORA and we've been looking with the LLBO at how to do this. We're trying to make sure that we can balance the interests of people who may make home-made wine and want to serve it at a wedding in their own family, be able to balance that interest out with the issues that have been raised with the ORA.

Ms Haeck: If I may expand, locally, the wine council in particular has raised the issue that at a family function, not necessarily that a home product is being used, but that there might be a smuggled product that has found its way into this particular event. The ORA makes the comment at the bottom of that first paragraph that it's not

tested by the liquor control board, and I'm just wondering to what degree there is the ability within the current structures that may exist between the two organizations to follow through on the testing of those products.

Ms Longo: I guess I have to answer that in two ways. Home products that are made legally at home and served, if they have an SOP licence, at a wedding or something like that don't have to be tested by the LCBO. Smuggled products ought to be tested, but it's hard to get them tested because they're being smuggled.

Ms Haeck: If there is a suspicion that they are, what is the mechanism? Do you have a mechanism at this point for testing this?

Ms Longo: We've asked everybody in the wine community and everywhere else, where they've got anecdotal evidence, where they think something's happening—because that's been the source of much of finding the smuggled or illegal activities—to let the LLBO know as quickly as possible. As soon as they can get there, then they will be able to find out what they're dealing with.

Ms Haeck: Ms Longo is making a response to a concern that's very much in my riding, and the way Mr Oliver has raised it is definitely mirroring some concerns relating to my wine community.

Mr Chiarelli: I'm particularly appreciative of the fact that you do have suggested technical amendments which will be very helpful to us when we get to clause-by-clause. But I'm concerned about your comments that it's not a minor housekeeping bill and that it can generate some fundamental changes in the hospitality business. Could you be a little more specific on some of the changes, perhaps give me the order of magnitude of your concern and tell me how it's going to impact negatively on the average restaurateur, if you could define one?

Mr Oliver: It's difficult to define an average restaurateur in these days. I guess the average one is the one that stays open, keeps the doors open.

Our concern is that we don't know the direction this legislation is going. We don't know what the mindset of the government will be two years or five years down the road. If it's simply where the government is saying it's going today, we wouldn't have as big a concern, but what we're doing is entrenching it in legislation and we don't see a need to put it into legislation.

For the average restaurateur, they know exactly who regulates them. We now have the liquor licence board. If they have a question about hours of operation of their establishment, they deal with the liquor licence inspector or the board, and when they have someone coming in the front door, they know it's the liquor inspector.

What we have potentially down the road are duplicated services. It would be the equivalent of Ontario setting up two police forces, the confusion it would create for a resident in Toronto to know there is a provincial police force and then a provincial police force 2. You wouldn't know who to call or how to deal with it. Those are the concerns we're hearing back from members.

For Ontario to comply with its obligations under the Canadian-American beer trade agreement, we don't

believe this needs to be contained in it. All Ontario needs to do is demonstrate it has an ability to check the entire distribution chain, but it doesn't have to have that residing all within one ministry or one department.

Mr Chiarelli: I'm not sure I got the full import of what you were indicating with respect to competitive issues related to inspections by LCBO. Could you indicate what your concerns are in that area?

Mr Oliver: Currently a licensed establishment purchases its product from both the Brewers Retail as well as the LCBO. What could potentially happen is that if a LCBO store in a small town noticed that sales at their licensed establishments were dropping, they in theory under this power—whether they would do it or not is a second thing—could say, "We think they are getting special prices from BRI," and send in an inspector from head office or even be appointed as an inspector themselves to come in and check the confidential business invoices between BRI and the licensee, even though they're competing for that same business.

1720

Mr Chiarelli: So you're saying basically they would be in a potential conflict of interest.

Mr Oliver: Exactly, and what we want to do is make sure that there isn't even a perception of a conflict.

Mr Chiarelli: And of course we're talking here about government tax revenues as well, government income.

Mr Oliver: Yes. Government income is dictated by how much the LCBO sells as opposed to how much the Brewers Retail sells.

Mr Chiarelli: The other point you covered was the burden on small business that might be generated as a result of this. Could you be a little more specific on that, other than the duplication of inspections?

Mr Oliver: It's predominantly the duplication, but one of the concerns we have is that the LCBO will use this as an opportunity to request information from licensees. Currently, if you get a request for information on sales or anything like that, it goes to the LLBO and they use that just for enforcement. There is a potential that you'd get a whole series of different questionnaires coming from the LCBO. Would they be trying to evaluate market share or trying to evaluate their sales or trying to evaluate whether American product is coming through the normal channels or something like that? That's where the confusion arises. Confusion is an administrative burden.

Mr Harnick: You heard the discussion I had with the ministry people. It doesn't appear they're going to accept the amendments you've provided, although I wasn't permitted to ask them and get an answer. But it appears that they believe a memorandum of understanding between all the government agencies that are involved in regulating the sale and distribution of spirits, beer, wine will suffice to avoid the duplication that you fear. Does a memorandum of understanding, which may one day develop or may never develop, as a solution satisfy you as to this issue of duplication of inspections?

Mr Oliver: We've certainly had discussions subsequent to the second reading of the legislation with the ministry officials regarding a memorandum of under-

standing, and our position would be that a memorandum of understanding can address the problems as a secondary. But we have the opportunity to fix the legislation now. What we're really doing is passing something and saying, "Oh, but we're not going to use it." It just doesn't make sense to pass something and say, "But we're going to take this out and piece out," when you have the opportunity now to address those problems so you don't have to rely on a memorandum of understanding.

A memorandum of understanding is only as valid or as enforceable as whoever is in power today or whoever is the signatory on that. There's nothing that would require public scrutiny if a memorandum of understanding is amended two years down the road or three years down the road. Our concern is: We have legislation, we have the opportunity to fix it now. Let's do it.

Mr Harnick: I couldn't have said that better myself. I wonder whether the ministry wants to comment on that.

Mr Bourgeois: There's been a great deal of emphasis placed in the ORA on duplication as well as in effect the potential for a bad-faith inspection. I think that's the underlying concern, that the LCBO or the government in some fashion will have bad-faith inspections. That's my understanding of the competitive issue.

Mr Harnick: That's not the issue at all. The issue is duplication of inspection. Nobody said anything about bad faith or anything of that nature at all.

Mr Bourgeois: I was trying to express my understanding of the concern about the competitiveness issue and the conflict-of-interest issue. If my understanding is incorrect, I apologize.

In any event, with respect to the duplication issue, as I indicated before, the primary purpose is for the liquor control board inspectors to ensure compliance under the legislation with respect to the GATT and the beer trade agreement. It's the legal advice that has provided that there will be a necessity to be able to track beer and other products, as well as to ensure that a national treatment has been accorded throughout the regulatory structure and throughout the retail structure as well, and to be able to demonstrate that to the trading partners with Canada and Ontario. The legal advice to the ministry is and has been that such provisions are necessary.

Mr Harnick: Does that answer satisfy the ORA?

Mr Oliver: In our interpretation of the Canadian-American beer agreement, the onus is placed on the government of Ontario to track product. They may need to track it through two or three ministries or even two agencies of one ministry. The liquor control board can track it through the manufacturing and distribution system and the liquor licence board can track it through the licensee community. But principally, most of the concerns for the Canadian-American beer agreement would be at the distribution system between BRI and LCBO and not pertaining to the licensee. How much we purchase our product at is not relevant to treatment of nationality.

The Chair: Thank you, Mr Oliver and Ms Solomon.

On Monday, May 2, at 3:30, we'll be dealing with clause-by-clause.

The committee adjourned at 1727.

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Substitutions present/ Membres remplaçants présents:

Duignan, Noel (Halton North/-Nord ND) for Mr Bisson
Hodgson, Chris (Victoria-Haliburton PC) for Mr Tilson
Wiseman, Jim (Durham West/-Ouest ND) for Ms Harrington

Also taking part / Autres participants et participantes:

Hansen, Ron (Lincoln ND)

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 2 May 1994

**Journal
des débats
(Hansard)**

Lundi 2 mai 1994

**Standing committee on
administration of justice**

Liquor Control
Amendment Act, 1993

**Comité permanent de
l'administration de la justice**

Loi de 1993 modifiant la Loi
sur les alcools

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Monday 2 May 1994

Lundi 2 mai 1994

The committee met at 1549 in room 228.

LIQUOR CONTROL AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT LA LOI
SUR LES ALCOOLS

Consideration of Bill 113, An Act to amend the Liquor Control Act / Projet de loi modifiant la Loi sur les alcools.

The Chair (Mr Rosario Marchese): Today we'll be considering clause-by-clause of Bill 113. We will begin with section 1. Any comments or amendments?

Mr Charles Harnick (Willowdale): Mr Chairman, I arrived here today and found on my desk a submission from the Lakeport Brewing Corp. I really haven't had time to review this in its totality, but it appears to be a brief of some significance. I wonder if you have any comment about why we didn't have this before the last session or why this group isn't appearing here to present this brief so we might be able to ask them questions about some very significant issues they've raised.

When I read about this very significant employer in the Hamilton area recommending that "the enactment of Bill 113 and the promulgation of the regulations thereunder be deferred until such time as an independent, comprehensive study of BRI operating costs and service charges has been undertaken," I really wonder if it's prudent to deal with this without hearing from this group.

The question I really want to ask them is, how does their particular concern impact on Bill 113? It may not impact on it at all, but it's a pretty significant brief and I really would like to know whether we're just going to ignore this or how we're going to consider it, whether we're going to have any kind of discussion about it or whether we just find it on our desks and ignore it and continue with the bill.

The Chair: Several things: The subcommittee met and we had a sense of who wanted to appear before the committee. There was enough time for anybody who was interested to tell us if they were, in order to be put on the list. As far as we know, this particular group did not ask to be placed on the list of deputants.

We are aware, however, that they wanted to submit something to us. Through the clerk, I understand we urged them to send it to us as soon as possible. It came to us, however, on Friday, at what time I'm not sure, but obviously it was very difficult to send to the respective members at that time. That's why it appears on your desk now. How you want to deal with this is something you might want to respond to, and the rest of the members on this committee.

Mr Harnick: What I would like to know—and I guess the parliamentary assistant is the most appropriate person who can tell us this for the purposes of the record—does the concern expressed in this brief from the Lakeport Brewing Corp, dated April 28, 1994, have any connection to Bill 113 that we're presently considering? Are any of the sections in Bill 113 going to impact on Lakeport Brewing in terms of the material presently before us?

Mr Noel Duignan (Halton North): The ministry's involved in litigation in this aspect and can offer no further comments on this.

Mr Harnick: What I want to know and what, I would submit with respect, we should know before we consider this bill any further is whether Bill 113 impacts on the concerns of Lakeport Brewing as set out in its brief. Surely the parliamentary assistant can tell us whether in fact that is or is not the case.

Mr Duignan: In fact, Bill 113 provides an opportunity to deal with this issue in the long run.

Mr Harnick: Mr Chair, I can appreciate that you're exasperated with me already, but just hear me out, with respect. I have some genuine concern that this is a very important brief. My concern—

The Chair: Mr Harnick, what do you recommend? You heard what I said. They knew about this hearing. They didn't want to depute, as far as I know. We urged them to write a brief, as quickly as they could, obviously. We're lucky to have this in front of us at this time. What do you want us to do? Suggest something.

Mr Harnick: I want the parliamentary assistant to tell me in a very categorical, straightforward way whether Bill 113, this piece of legislation before us, has any effect on the concerns expressed in the brief submitted by Lakeport Brewing. If the parliamentary assistant doesn't know, I think we should adjourn so he can find an answer, because that should affect how we're going to vote on this bill.

Mr Duignan: We'll ask ministry staff to comment.

Mr Don Bourgeois: I'm Don Bourgeois, legal counsel for the Ministry of Consumer and Commercial Relations. The ministry isn't in a position to be able to comment specifically on the contents of the brief nor on the litigation itself. However, the bill does provide statutory authority, for example, for the Lieutenant Governor in Council to pass regulations governing the operations of government stores or classes of government stores, and it is possible to consider some of the issues that are apparently raised in that context.

Mr Harnick: I didn't know this was coming and I didn't have very much time to deal with it, but they make a comment at paragraph 2.7 on page 6: "It is, of course, impossible to comment intelligently on the legislation without being able to examine the draft regulations which the government intends to introduce, but in view of the impact of the actions already taken by BRI and the LCBO it is important for the committee to be made aware of the adverse effect of the new regime at BRI, which appears to have come into existence without the benefit of implementing legislation by the province of Ontario and without the impact of the changes being fully understood by the government and the LCBO."

All I'm concerned about is whether Bill 113 impacts on their concerns. I don't know. I don't know the answer, and I'm looking to the ministry to be able to tell me so I can know how to vote on this bill.

Mr Bourgeois: The bill provides an opportunity to do so by regulation or through terms and conditions established by the Liquor Control Board with respect to the government authorizations that are issued by the Liquor Control Board to Brewers Retail.

Mr Harnick: But you see what they say at item 2.7. They're very clear. "It is, of course, impossible to comment intelligently on the legislation without being able to examine the draft regulations." If they can't do it and they're in the business, how are we supposed to be able to do it?

Mr Duignan: Mr Harnick, to be quite frank and honest, there are many pieces of legislation that come to committee that don't have the regulations prepared with the legislation, so to me it's a moot argument.

Mr Harnick: I just think we'd all be in a better position to know what we were voting on if we knew whether Bill 113 has any impact on what they're saying.

Mr Bourgeois: The ministry will be consulting with the various participants in the industry as we prepare the regulations.

Mr Harnick: Okay. So much for that.

1600

Mr Alvin Curling (Scarborough North): This submission from Lakeport Brewing Corp is before us. I'm just wondering, is this the first time we have seen this? Maybe the parliamentary assistant could tell me.

Mr Duignan: I understand that's correct, yes.

Mr Curling: We have had submissions before us and this isn't one.

The Chair: This is not one of them.

Mr Curling: I'm sure that in the democratic process all submissions that came before us would be considered seriously. Therefore, the drafting and proper amendments to the bill would be made by each party after reading this because we'll have taken into consideration the submission. Isn't that the process?

The Chair: That is the process. This document came in Friday. We couldn't deliver it any sooner, so it's in front of you now.

Mr Curling: I understand it's before us now. I don't have any great faith in the process of how you have done

regulations anyhow. You have shown us that your regulations will come maybe a year after this bill has gone through and will never be proclaimed until some time later.

I suggest that we adjourn to give my party an opportunity to digest this and see if we can encompass some of the recommendations, if we think it's necessary, into Bill 113. We may be submitting other amendments to the act. My suggestion is that you have to give us some time for my party to respond to this.

The Chair: Mr Winniger, can I have your attention for a moment? We have a suggestion that has not been moved yet. There is a submission that is before you today. The opposition members are saying they haven't had a chance to review this document and they'd like some time to read it. I would like the various members to respond to the suggestion. Presumably you're saying we defer dealing with clause-by-clause to another day, until you have an opportunity to read this. I would welcome remarks from the members.

Mr Duignan: First of all, Mr Chair, what happens if we get another brief today and another brief tomorrow and another one the day after? Do we keep adjourning this? I'm sorry, I'm not in favour of adjourning.

Mr Harnick: I think the parliamentary assistant would do his colleagues who sit in the Legislature representing ridings from Hamilton a great service (a) if he read the brief and (b) if he understood that this company employs 135 people in Hamilton, "has already invested \$3.5 million [in Hamilton] and plans to invest a further \$4.8 million in the brewery and makes annual contributions of more than \$50 million to the regional economy. [It] is currently expanding its market into Quebec and western Canada [and] is also exporting beer to the United States. As a result of the American brands being brewed under licence, Lakeport is preserving Canadian jobs, so Lakeport's contribution to the Ontario economy is expected to increase significantly over the next few years. Perhaps most important of all, Lakeport is investing money in creating jobs in a region which has been hard hit by plant closures, downsizing and business failures."

It seems to me that if your party really stands for the creation of jobs, when an employer as significant as this in the Hamilton region, that's making the investment this company is investing in the Hamilton region, we had better adjourn this and understand what this brief is all about.

I can appreciate the importance of ramming this thing through, but it's a matter of waiting one more day. I suspect clause-by-clause will take all of 25 minutes to complete. This is a very significant brief, not some brief put in by anybody to delay this, but this is a very significant employer in Hamilton. But if you don't care about Hamilton and if you don't care about your own colleagues—

Mr Gilles Bisson (Cochrane South): Would you stop it?

Mr Harnick: Oh, be quiet.

Mr Bisson: Come on, don't be such a—

The Chair: I urge you to control yourselves, please.

Mr Harnick: It seems to me that when you get a brief like this, you should pay it some heed. I think my friend the member for Scarborough North's suggestion is a good one, especially to a government that professes to be in the business of creating jobs for workers.

Mr Duignan: Is this a motion or a suggestion?

Mr Bisson: If I understood correctly at the beginning, and I'd just like clarification from the Chair, has the subcommittee ordered up the business of the committee? Am I correct in understanding that?

The Chair: Yes.

Mr Bisson: There was no request on the part of the company in question to make a submission with themselves being here?

The Chair: That's correct.

Mr Bisson: I say we move on with the business.

The Chair: This group had discussions with the clerk about submitting this report to us. My discussion with the clerk suggests that they may not have even had it in time for clause-by-clause, but they managed to do it in advance, so this is what we've got here in front of us. It came rather late.

Mr Bisson: The point is that we receive a number of briefs on all committees, and past practice has always been that you have up to a certain day to bring the brief before the committee. If we as a committee start saying, "Well, because we have yet another one that came in, we can't go on with the business of the committee," it's a heck of a precedent having to do with every committee that sits in the Legislature at all times.

I would say we move on. As to the comment made by the member, I understand what he's trying to say, but I think it's a little bit on the strong side. As members—

Mr Harnick: It's not on the sly side at all.

The Chair: Hold on. Mr Harnick—

Mr Harnick: On a point of privilege, Mr Chairman: There is an allegation that a comment I made was on the sly side.

Mr Bisson: That's not what I said.

Mr Harnick: Well, that is what you said.

Mr Bisson: That's not what I said.

Mr Harnick: Mr Chair, number one, I ask him to withdraw that remark; number two, I ask him to read the brief, because it's a very significant brief.

The Chair: All right. Mr Harnick, you made your point. Mr Bisson.

Mr Bisson: I said "a little bit on the strong side." If the member would take the cotton out of his ears, he might be a little better off than he was when he started this.

Mr Harnick: I heard "sly."

The Chair: I'm sorry, I can't hear now.

Mr Bisson: I said "on the strong side." If the member understood "sly," I apologize, but what I said was "strong."

To carry on and finish the point I'm trying to make, we sat and listened to the members across for the last 15

minutes talking about the importance of this brief. I would agree with them: It's a brief we need to read and to look at. But we also need to keep in mind that, as committees met throughout this Legislature over the last 100-odd years, you don't start postponing the business of the committee because yet another brief has come forward. I would say we move on and deal with the business of the committee.

Mr Curling: You said "move on." We have decided to accept this brief, and if you want to consider it in its true sense, how could we move on? If you move on, you're saying, "Send your brief in, but we'll ignore it anyhow," because this is what we'd be doing.

The comment made by the parliamentary assistant—Mr Chair, you're shaking your head, but let me remind you what he said. He said, "If we get another brief, what are we going to do?" I'm sure you have a process in place to say that submissions will stop as of that day and if it's late, it is late. Don't tell me now that if tomorrow another submission comes in you'd put forward to us that we will consider that one. We know that a deadline for submissions is either over or not. You gave the indication to Lakeport Brewing Corp, a very significant company, that their submission would be seriously considered when it got here.

It seems to me there is some sort of hypocrisy here to say it is submitted but we're not in any way going to look at it. We haven't read it. How can I or my party intelligently respond to this, make it relevant to this so make an amendment, if necessary?

I suggest to you, Mr Chairman, what we could do is to rule that this is out of order and throw it out, and let us proceed. Then we can tell this group that the submission is late and we will not consider it. Or if we rule that we're going to accept this, then I'm asking you, a plea to the Chair, that we get some time to read the submission.

1610

The Chair: It's regrettable that the submission is here at this late hour. Without diminishing your comments or the submission, they were aware of the time lines. They didn't choose to depute. They sent this submission, and it was sent late.

Mr Curling: Then you should not have accepted it here.

The Chair: I listened to both sides. If you want to move that in a motion and have the vote, we could do that, but I'm not sure we need to hear any more discussion one way or the other, because I think we've heard enough. Do you want to move that?

Mr Harnick: May I make one last comment?

The Chair: Is it a different—

Mr Harnick: Oh, it's totally different.

The Chair: All right, go ahead.

Mr Bisson: I have another comment too, Mr Chair.

Mr Harnick: The concern I have is that I've asked the parliamentary assistant and I've asked the gentleman from the ministry whether there is anything in this act which impacts on the concerns set out in the brief. Quite frankly, they really didn't know. All I would like is some

comment from the ministry, after they've had an opportunity to review the brief, just telling me whether there's anything in this bill that will impact on the concerns Lakeport Brewing sets out in its brief. That's all I'd like.

The Chair: Mr Harnick, you've asked that question and it's been answered, unless Mr Bourgeois wants to add something different to his previous comments. Otherwise, it's been dealt with.

We've discussed this on the basis of a suggestion. If you want to move it as a motion so there is a vote on that, please do so. Otherwise, we will move on.

Mr Curling: What I'm asking you for, basically, is direction.

The Chair: I have given direction.

Mr Curling: No, you have not. I've asked you this: Is this submission acceptable here? If you can tell me whether it's acceptable or not, we can move one way or the other.

The Chair: This submission is before you. Yes, I know you haven't had enough time to review this document.

Mr Curling: You're the Chair. You must know when you're going to cut off the time for submissions. If a submission comes in tomorrow—

The Chair: But I've already given my answer, Mr Curling. If you wish to move a motion as to what you had suggested so we can have the vote, please do so. I think we've had enough discussion on the matter.

Mr Curling: Wait a second. I'm asking you a simple question. If another submission comes in tomorrow—I'm asking you that.

The Chair: If another submission comes tomorrow and we've dealt with this in clause-by-clause, then a different process has to take place, obviously. If there's another submission coming after today, we have a serious problem. Don't you agree?

Mr Curling: I just want you to say, "There shall be no more submissions as of today." There must be a time when you decide to deal with this.

The Chair: We have had a time, and those who were interested in making a submission or giving a deputation could have done so in order to have them considered for clause-by-clause.

Seeing that there's no motion on the floor, we'll move on. On section 1, any discussion?

Mr Curling: What are you saying? I'm going to put my motion.

The Chair: Mr Curling, I'm trying to help you by being as clear as I can. I said we have discussed your suggestion. If you want to move something based on your suggestion, do so. Otherwise, we are moving on.

Mr Curling: Mr Chairman, I asked for your clarification, and before you even clarified it—you were fuzzing all over the place on this. You did not clarify whether this is the last submission. I said if you could clarify that, I'll move into my motion. The fact is that this submission just arrived here today. It can't be considered because we haven't read it, and you said so. If it could be considered a part of this discussion and a part of the amendment,

then I would move the motion. You couldn't decide for me whether another submission could come in tomorrow. You keep telling me it's a serious problem. I sit on many committees and there's a time when we say, "No more submissions," because we have to get on with the other phase of it. If you're saying this is a submission that will be considered in this, then I remove the motion.

The Chair: Mr McClelland, I'm not sure whether you want to participate as well, but I'm ready to proceed on this section. I'm not sure that commenting on Mr Curling's remarks would be helpful to him or to this committee.

Mr Curling: I have a motion. We can't go into—

The Chair: Mr Curling, I was trying to help you. Three times now I've asked you whether you want to put your suggestion as a motion, and you're not doing that. Move something so we can consider that again.

Mr Curling: I moved the motion before—

The Chair: What is your motion, Mr Curling? Move it in words. Move something.

Mr Curling: I'm saying we should suspend the clause-by-clause until we have an opportunity to read this submission, because it's quite likely it may have some impact on the amendments.

Mr David Winninger (London South): You could have read it five times by now.

The Chair: Do you want to suspend it for a particular time: a day, a week, a year?

Mr Curling: Just a day. Give us until tomorrow.

The Chair: One day. Let us begin debate on the motion again, for those who have something new to add.

Mr Curling: May I speak to my motion now?

The Chair: Sure, go ahead.

Mr Curling: I just want to make it formal because of the motion being moved. Considering that a submission has just arrived on my desk and my colleague's desk and it's going to have some impact on Bill 113 and the clause-by-clause amendments, and considering too that the parliamentary assistant could not respond to whether or not it has any bearing or impact on the bill, I feel we need that extra time in which not only myself but my party would get the opportunity to read this submission and make the necessary amendments. I hope the government and my colleagues could consider that, that we can at least say to Lakeport Brewing Corp we take its recommendations seriously.

Mr Carman McClelland (Brampton North): I was at another meeting in the building and I regret coming in late, partway through discussion, but from what I've been able to determine from the debate, if the committee on balance is not disposed to accepting the motion moved by my colleague, Mr Curling, I think it would be incumbent on us, perhaps yourself as Chair, to at least respond to the people who have submitted, namely, the Lakeport Brewing Corp, and advise them that regrettably their information had arrived beyond the deadline and accordingly we're not able to have substantive consideration in the debate; that their points, although received, were not taken into account in a formal sense. All I'm asking is

that in the absence of giving us an opportunity to review it, the company that made this submission be advised—

The Chair: This room is not conducive to additional noise when someone is speaking. Mr McClelland.

Mr McClelland: Thank you, Mr Chairman. I've stated my position: in short, that I hope we might have an opportunity to review the submissions. My colleague, Mr Harnick, has indicated that there are some interesting, substantive issues raised in the brief. I have not looked at it. If we look back in retrospect, unhappily, and said, "Gee, we should have thought about that," that would be a shame.

On the other hand, I recognize that notice was given in the usual way by the clerk. All I can say is that I hope we'll take that into consideration as we dispose of and deal with the motion put forward by my colleague. Thank you, Mr Chairman, for your indulgence.

1620

Mr Bisson: Mr Chair, for the sake of those members who didn't have an opportunity to read this brief, I've had the opportunity to go through it in some detail while this argument has been going on. To put it in context of what the act does and what they're asking for in this brief might help you make your decision in understanding what we need to do here.

The bill before us, Bill 113, deals with two things. Just for the sake of the record—not so much for you, because I know you understand it—the bill will enable the government and the Liquor Control Board of Ontario to require Brewers Retail Inc beer stores to sell imported beer subject to the same terms and condition that apply to domestic beer. That is a question that has been brought before us because of what happened at the GATT. I think we need to understand where that's coming from.

The second thing the bill does is deal with people who are distillers, who make alcohol.

In reading the brief from this company, Lakeport Brewing's argument is the amount of money they would have to pay as a distribution fee through the BRI system, which is an argument between the BRI and this particular brewer. The bill, as I understand it from going through it, and I conferred in order to make sure, would not affect their ability to deal with this matter. If anything, it would allow us to deal with it in a little better way, if anything.

This whole argument we're having is somewhat academic, because what the bill does and what's actually inside this submission are not fairly well meshed together. In short, they're asking for a mechanism to have a better rate with Brewers Retail Inc, the distribution system of beer throughout the province of Ontario, and that is a matter between the BRI and that particular company. This bill would not impact upon that. Take your time to read it and you'll see that's what it says.

Mr Harnick: I have a question to the parliamentary assistant, and my question is very straightforward. How come Mr Bisson can answer my question, but you can't?

Mr Duignan: I thought we answered the question, frankly, earlier on.

Mr Harnick: You haven't. If Mr Bisson's right, and he's not an exalted parliamentary assistant in all of this—

Mr Duignan: He is, actually.

Mr Harnick: How come he can answer the question and you as the parliamentary assistant and the gentleman with you from the ministry can't answer the question? Now I would like to know, is Mr Bisson right? If Mr Bisson's right, I'm happy to move on. He didn't say what you said when I asked you the question, nor did the gentleman from the ministry. If Mr Bisson's right, I'm happy to move on. If Mr Bisson isn't right, maybe we should adjourn this for a day so you can go back and ask the minister or the deputy minister whether there's anything in this bill that impacts on the concerns that are set out in the brief. It's very simple.

Mr Duignan: The questions have been answered. It's up to you whether you want to accept or reject what Mr Bisson says. But as I pointed out to you earlier on, the question has been answered by both myself and the ministry, and if you want to take the answer from Mr Bisson, fair for you. You have three answers: Pick one.

Mr Harnick: And one of them might be right.

The Chair: We're ready for the question now. All in favour of Mr Curling's motion? All in favour? Opposed? The motion is defeated.

Moving on to section 1, is there any discussion on section 1? Seeing none, shall section 1 carry? All in favour of section 1? Opposed? That carries.

Section 2: any discussion? Seeing none, all in favour of section 2? Opposed? Section 2 carries.

Section 3, any discussion on section 3? I understand there are amendments.

Mr Harnick: I move that subsection 4.1(1) of the act, as set out in section 3 of the bill, be amended by striking out "the Liquor Licence Act" in the fifth line.

What this does is respond to the concerns of the Ontario Restaurant Association. Quite simply, the restaurant association said, why should someone licensed under the LCBO be investigated by both that body and another body which is really duplicating what the first body is doing? You can take a look at the brief they provided, and that was their main concern. Their main concern was the duplication: this expansion of LCBO power and overlap with existing LLBO power. All I'm doing is making an amendment so we don't have each body duplicating the services of investigation of the other body. It's a perfectly reasonable amendment, and I think every member should support it. That's the recommendation of the Ontario Restaurant Association, and I know Mr Bisson, who's looking puzzled, has read their brief as well as the Lakeport Brewing brief—

Mr Bisson: I'm puzzled with you, not the brief.

Mr Harnick: Lots of people are puzzled with me, but what we're dealing with here is the Ontario Restaurant Association. They have to face the wrath of both the LLBO and the LCBO in terms of investigations, and they say, "Look, just have one body investigating us, not both."

Mr McClelland: If I might add to that, I think the amendment put forward by Mr Harnick on behalf of his party makes sense for other reasons as well. I've heard from time to time that not only within one scheme are

there inconsistencies, to be very candid, it's a function of human nature—if I could be expansive here, Mr Chairman, if you and I were charged with like responsibilities and given guidelines, our responsibility under legislation as an inspector may be to ensure compliance, but there is always an interpretive element. Regardless of how specific one attempts to be, both in setting out guidelines and setting out the responsibilities of the inspector pursuant to the act and regulations, if you look at experience and case history, after you do all of that, looking at all the tools you have, there is still a tremendous amount of subjective analysis and a subjective element to rulings that are made.

To the degree that that creates uncertainty, I think we have a responsibility to eliminate that where possible. I don't think it should be necessary to say, but I suppose we should put on the record and indicate that one of the frustrations all businesses have—and it does not fall at the feet of the current government; it's of all governments—is that there is this concept that the left hand doesn't know what the right hand is doing and things change from time to time and there's no certainty. One of the things that businesses want is certainty and a sense of predictability.

God knows, there are enough pressures the restaurant and hospitality industry are under right now. If we can make their life a little bit easier, help them deal with the paperwork and the compliance and say to them, "Look, we understand your concern about paperwork"—a lot of businesses say they spend an inordinate amount of time just complying with government regs.

I don't want to get off on a tangent, but I just use some experiences that businesses have where they have two different ministries and they have to do essentially the same compliance. They hire consultants to respond, to fill out forms and take the same data and translate it and present it in a different format to meet ministry requirements. I think what we're doing here is multiplying that burden. We're saying, "We're going to give you uncertainty upon uncertainty," in terms of not only the subjective element of personnel who come in and have different interpretation but also a different process and a different body to do the investigation and compliance requirements.

There is a legitimate role for government to monitor and to ensure the compliance, and most responsible operators want that so they're playing on a level playing field. But at the same time, surely each one of us sitting around this table has heard from people in our own constituencies and interest groups that one of the things people want in business is the elimination of uncertainty, to give them a sense of predictability, to let them know what the rules are and to stick to them. I think that we move, albeit a small measure, towards that end if we accept the motion, the amendment, put forward by my colleague. I would hope we'd give that careful consideration.

I'd be interested in hearing from either the parliamentary assistant or legislative counsel—legislative counsel particularly from a technical point of view—if there is any particular reason that would not be workable. From a policy point of view, which is appropriate for the

parliamentary assistant, I guess, why not? Why can't we do this? If there's a good reason, I'd like to hear it.

1630

Mr Bisson: You've seen the question I would ask, and we can deal with it at the same time. Is that okay?

The Chair: All right. Go ahead.

Mr Bisson: I question the amendment brought forward just on this basis: We have the Liquor Licence Act as the act that gives permission to a restaurateur or a hotel to sell beer, wine, spirits etc. Am I correct? If you were to take the Liquor Licence Act out of subsection 4(1), wouldn't that also mean you would not be able to withdraw or pull a licence in the event there's a contravention? Isn't that what this would lead to?

Mr Duignan: Not in this particular case. The liquor licensing board would still have the authority to do that. But some of the issues raised by the critic for the Liberal Party will be dealt with by a memorandum of understanding, where you won't have two sets of inspectors going into one premise; there will be just one set of inspectors.

The other important aspect of this is that if we strike these words from this particular act, the liquor control board would not have the authority to go into a premises that manufactured alcohol such as beer or spirits etc, and therefore would not be able to follow the flow of beer and would not be able to follow its obligations under the GATT agreement.

Mr Bisson: If we were to take subsection 4(1) as amended on the part of the Conservatives and put that in place, wouldn't that take away the power of the people, through this act, to be able to go out and enforce the act with distillers etc?

Mr Duignan: That is correct.

Mr Bisson: In short.

Mr Duignan: In short.

Mr Bisson: So you would have an act with no teeth.

Mr Duignan: That's right.

Mr Bisson: Okay. I thought that's what he was up to.

Mr Harnick: It seems to me rather strange for a government to legislate to accomplish a particular goal and then take it back by a memorandum of understanding which may or may not get completed as between one board or one tribunal and another.

I just want to read, for the purpose of those who weren't able to be here the other day, what the Ontario Restaurant Association is concerned about.

"The ORA is concerned both about the application of the search-and-seizure requirements, but, more importantly, the transformation of the LCBO from a retailer of beverage alcohol in Ontario to that of a body empowered with enforcement and inspection capacities. The Ontario Restaurant Association is concerned that granting these powers to the LCBO is a major and fundamental departure from current and historical practices."

But what seems to me of even more significance is this comment that the restaurant association makes:

"The Ontario Restaurant Association is concerned that what will be created by departing from the traditional role

of the LCBO of retailer is a double regulatory burden on licensed establishments. The potential exists that a licensee will face an inspector from the Liquor Licence Board of Ontario coming in to inspect their facility and then, a day or two later, seeing an inspector from the liquor control board coming in and doing the identical type of inspection or search and seizure. The Ontario Restaurant Association sees this as simply duplicating existing regulatory services, which in turn will use up scarce resources and place an additional administrative burden on the small business operators which comprise the licensee community. As well, Bill 113 will eliminate the clear distinction, which is important, between the liquor control board and the Liquor Licence Board of Ontario."

It seems to me that all of those reasons are very basic to the difficulties all governments are having now—trying to eliminate duplication of services, trying to make each of the roles of government more responsive to citizens—and here you have a government in Bill 113 creating a situation of duplication and then saying, "Well, we'll take it away with a memorandum of understanding," which may or may not be signed.

That's the basis of my request for this amendment, which I hope you'll support.

Ms Christel Haeck (St Catharines-Brock): I have listened to Mr Harnick, and I was here for the presentation by the restaurant association. I'm struck by the fact that there's been, for one thing, a very strong commitment on the part of the ministry to confirm with the restaurant association that there will be no duplication.

If I recall, and this is really a question more to the parliamentary assistant and the ministry staff, I do not believe there are many hundreds of employees we were talking about. I believe in one instance—I've forgotten under which act you're talking about—there were about six employees and I think under the other you could probably give the rest of this committee a better idea of how many people are employed in those capacities.

You're not going to have that kind of duplication. There's just not enough staff to do this in the way that's being described. If Mr Duignan could give me clarification of what's involved here, I think it very much answers the point Mr Harnick is trying to make.

Mr Duignan: First of all, we're dealing with six inspectors at the liquor control board. I'm not sure of the exact number of inspectors who are employed by the liquor licence board, but we'll endeavour to get that information for you.

Ms Haeck: But you're not talking about many thousands of employees who are bumping into each other on the street whose sole purpose in life is trying to duplicate the services for various restaurants and licensed establishments across the province.

Mr Duignan: It's very clear that we will have a memorandum of understanding, and we're quite willing to consult with the Ontario Restaurant Association and other stakeholders regarding the wording of that particular memo as well, so there is not going to be any duplication and there will be a clear distinction.

Mr McClelland: I don't know the odd number and

it's probably not helpful just to speculate. I know there are a significantly larger number under the LLBO, which just makes sense, obviously, inasmuch as there are literally thousands of licensed establishments in Ontario. It'll be interesting to hear those exact numbers.

Regardless of the numbers, I think that what we fail to understand is that, notwithstanding the best intentions, and again I want to remove a partisan element from this, there's a sense in the business community that government just doesn't understand and doesn't care. I think we can send a collective message to people who in many cases are not only fighting hard but struggling to get by that, "Yes, we want to listen to you and we want to begin to hear what you're saying, not to pay lipservice to you coming before this committee and expressing a concern but to say, 'Here's a tangible, practical way of demonstrating that we understand that you're tired of government interference, duplication and inefficiencies.'"

It is not only the fact that we are creating potentially a two-tiered system. I accept what Ms Haeck says, that the government has the best intentions of not allowing the system to grow and multiply and become a burden. I am sure we could go back, with not a great deal of effort, and look at like conversations on the record of previous governments that set up agencies and commissions and monitoring boards and all manner of processes by which governments seek to get their fingers into the mix. They are countless. I can think of a couple right offhand.

If you look at a small developer in the parliamentary assistant's jurisdiction who wanted to do a small development, he would have to contend with the Niagara Escarpment Commission, the Ministry of Natural Resources, the Ministry of Environment and Energy, the Ministry of Municipal Affairs, and countless other probably regulatory requirements. There are 30-something agencies, boards that you have to deal with in the greater Toronto horseshoe, the area that Mr Duignan and myself represent: 30-plus agencies.

1640

What does this government say? This government makes a lot of fanfare, appropriately so, and says: "We want to go out and we want to consolidate. We want to streamline. We want to make ourselves more efficient and more effective." The Treasurer says: "We want to send a message on May 5 that we are pro-business. Small business is important." Three days prior to that, we're sitting in a committee saying: "That's what we want to do, but by the way, what we're doing is we're giving you something a little bit different this time. We say we want to make life easier, but we're going to do something that's just a little bit different."

We have an opportunity. It's not a big deal right now, but it's representative of an attitude of government that says, "We'll not only get you once, we'll get you twice, and just to be doubly sure, we might even throw in another layering of administrative interference in the operation of your business."

If the government has a legitimate role, and I submit in this case it does, to monitor the conduct and the compliance of a licensed establishment, so be it. Let's do it simply, cleanly and with efficiency, and remove to the

extent possible the subjective uncertainties that will, without doubt, be generated by duplication of service and duplication of personnel.

It's not, I suppose, going to change the course of history, but I suggest to you that by giving some consideration to the amendment put forward by my colleague, it's going to send a message and the message will be: "We heard you. We appreciate your coming here, and we've taken into consideration your amendment or your suggestion from the restaurateurs. We're going to act on it." The other message will be: "Not only are we saying that we're concerned about our interference in business; we're actually doing something about it. We're not just going to talk about what we're going to do. We're actually going to do it."

I think herein lies an opportunity for us to do something not only worthwhile, but that makes abundant common sense, and I ask again if I could have an answer from the parliamentary assistant, is there a policy reason why this would not be viable? and perhaps from counsel, is there a technical or administrative reason why this is a necessity?

I wonder if they would be good enough to provide us with that answer.

Mr Duignan: Again, I can get legal counsel to comment on this; it's the same answer as he gave before. If you remove this particular wording from the act, we would not be able to go into the brewer for example to inspect the manufacture of beer or alcohol etc., and would negate our responsibilities under GATT.

I'd like to remind you that basically the restaurant association agreed with the ministry statement when they were here last week, somebody saying that the possibility of duplication of inspections has little or no chance of happening.

But I also want to point out from this particular organization that whereas they didn't want any LCBO inspectors going into their premises, they were quite willing to have the LCBO inspectors go into the you-brew premises. They didn't want it for themselves, but were willing for it to happen to the you-brew premises.

Mr Harnick: That's because they already have their own inspectors. It seems to me that about three and a half years ago, we were in this justice committee debating the support and custody orders enforcement bill. At that time, I moved an amendment and I said on my amendment: "Why are you bringing into the system a large group of people who are already complying? They don't need to be in the system and if you leave them out, you'll be able to focus the resources available against those who should be in the system, put them in the system and deal with them." In fact, we saw the figures that came out last week in question period which indicated that there were 50,000 people in the system, 75,000 people outside the system and the bulk of those paying are the people who were paying to start with.

You're just doing the same thing here. You're creating a greater bureaucracy to do what you've already got in place. I'm saying, don't duplicate. You don't have to.

The comment was made about you-brews. I point out

to the parliamentary assistant that the Liquor Licence Board of Ontario is there already inspecting licensed establishments. The LCBO would be then available to not waste time inspecting where there are already inspectors doing the job, but it in fact would be able to go to the you-brews, to the manufacturers or to places that the LLBO doesn't inspect. But don't take the LCBO inspectors and tell them to go to the same places that are already being regulated. That's all you're doing and it doesn't make sense. So that's the reason for the amendment and I move the question be put.

Mr McClelland: Mr Chairman, could we get this recorded, please?

The Chair: Sure. All in favour of Mr Harnick's motion to amend subsection 4.1(1)?

Ayes

Harnick, McClelland.

The Chair: Opposed?

Nays

Akande, Bisson, Duignan, Haack.

The Chair: That motion is defeated. Mr Harnick, on the next section.

Mr Harnick: The next sections that I proposed amendments for, which are 4.2(2), 4.2(3)(a), 4.2(3)(b), 4.3(2), 4.5(2) and 4.5(3)—and I think 4.2(2), if I didn't say that; I think I did—are all the same; 4.2(1), as well. They're all effectively the same motion that we just argued and I suppose there's no point arguing those, so I'll withdraw them, if that's the way the government wants to treat these sections. The only one left is 4.5(3).

Mr Duignan: I was just going to say 4.5—

Mr Harnick: Subsection 4.5(3) is different.

Mr Duignan: We're prepared to accept that amendment.

Mr Harnick: You're prepared to accept 4.5(3)?

Mr Duignan: Yes.

Mr Harnick: Okay.

The Chair: So Mr Harnick is withdrawing all those motions that are very similar to the one we have just dealt with. He's withdrawing that; that's right.

So we'll move on to the other subsection that is different, and that is subsection 4.5(3).

Mr Harnick: I move that subsection 4.5(3) of the act, as set out in section 3 of the bill, be amended by striking out "the answer shall be given on oath, upon affirmation or" in the fourth line.

Mr Duignan: We're prepared to accept that amendment.

The Chair: Fine. All right. All in favour of Mr Harnick's motion? Opposed? This motion carries.

Shall section 3, as amended, carry? That carries.

Section 4, any debate? Seeing none, shall section 4 carry? Carried.

Section 5, discussion? All in favour of section 5? Opposed? That carries.

Section 6, all in favour? That carries.

Shall the bill, as amended, carry? It carries.

Shall I report the bill, as amended, to the House? Agreed.

Okay. Ordered that the Chair report Bill 113, An Act to amend the Liquor Control Act, as amended, to the House? Agreed.

Mr McClelland: Mr Chairman, a small housekeeping point: I don't want to be contentious here. I just wonder, out of courtesy, if you could advise Lakeport Brewing Corp of the fact that its submission arrived. I just think out of courtesy, inasmuch as it was tabled, that they should be advised in writing in terms of the sequence of events and the timing that effectively—and I don't say this in a pejorative or derogatory sense—shut them out of the particular debate, taking into consideration the points

Mr Bisson made, just out of courtesy to let them know what happened.

The Chair: Just to be fair—because you said they were shut out—they were advised of this.

Mr McClelland: That's why I tried to qualify. I recognized as I spoke that that was a poor choice of words, because that has sort of a negative connotation. I don't mean it in that context. That's why I was quick to try to correct that. I said, recognizing what Mr Bisson said and others, if we could advise them in an appropriate fashion that we received it after the time frame. I think just out of courtesy, I'd appreciate that.

The Chair: We will do that. We are adjourned.

The committee adjourned at 1652.

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Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

*Winninger, David (London South/-Sud ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Duignan, Noel (Halton North/-Nord ND) for Ms Harrington

McClelland, Carman (Brampton North/-Nord L) for Mr Chiarelli

Also taking part / Autres participants et participantes:

Ministry of Consumer and Commercial Relations:

Bourgeois, Don, legal counsel

Duignan, Noel, parliamentary assistant to the minister

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Filion, Sibylle, legislative counsel



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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Tuesday 10 May 1994

Standing committee on
administration of justice

Subcommittee report



Chair: Rosario Marchese
Clerk: Donna Bryce

Journal des débats (Hansard)

Mardi 10 mai 1994

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Tuesday 10 May 1994

Mardi 10 mai 1994

The committee met at 1540 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Ms Margaret H. Harrington): As you can see, you have before you the report of the subcommittee, which met yesterday, and I will read the agreement of the subcommittee into the record.

"Your subcommittee met on May 9, 1994, and recommends that:

"(1) The committee proceed with Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act; and that two days (possibly three) be allocated for public hearings and two days for clause-by-clause consideration.

"(2) Groups will be invited to appear to provide evidence as directed by the subcommittee members, including the names of groups who have previously contacted the clerk.

"(3) The committee will give groups the option of providing evidence in camera if desired.

"(4) The time slots for witnesses providing evidence will be for 30 minutes.

"(5) Should any other groups wish to be scheduled, they be put on a waiting list pending a cancellation; and they be invited to submit written briefs to the committee by May 30, 1994.

"(6) A technical briefing by the Ministry of the Attorney General not be requested by the committee."

Are there any questions or comments?

Mr Charles Harnick (Willowdale): Just one question. We refer here to groups as opposed to individuals, and it may well be that, for instance, a judge may want to come and appear in camera as an individual.

The Vice-Chair: We could just insert "individuals or groups."

The other thing I want to point out is, at this point we have two people for Monday. If we do not get further people scheduled in on Monday, can you give us the option of cancelling on Monday and starting on Tuesday?

Constituency week is the 23rd and 24th, so we won't be there for that week. So we may be two days next week and then Monday the 30th and June 1, I guess.

Mr David Winninger (London South): One thing I was going to ask about, page 2 of the subcommittee report: I remember this list being discussed, but I'm wondering how General Division judges got on to that list. We talked about inviting the Chief Justice of Ontario, who has an interest in this, but I'm not quite sure what the thinking was in inviting General Division judges who aren't directly affected by this.

Mr Robert Chiarelli (Ottawa West): We were going to ask the Chief Justice to indicate—

Mr Harnick: It was my understanding that—

The Vice-Chair: One person at a time. Mr Chiarelli.

Mr Chiarelli: My understanding is that we were going to ask the Chief Justice to indicate to any of the other judges that they could attend if they wanted.

Mr Winninger: But would they have an interest in this subject matter, other than the Chief Justice, who has a role to play under Bill 136?

Mr Chiarelli: It talks about their compensation. Of course they have an interest.

Mr Harnick: No, no. That's provincial court judges.

They may have some interest in dealing with the makeup of the various committees and subcommittees to sit in place of the Chief Justice. They also may be interested in the outcome of the Small Claims Court amendments which the Attorney General indicated she would be making. But I think Mr Chiarelli is quite right. It was merely an invitation going to any judges who wished to speak, with the invitation going to the Chief Justice.

Mr Winninger: I don't have a problem with it. I was just raising a question as to what their interest would be.

The Vice-Chair: We'll leave it on the list. Are there any further concerns?

I would ask for a vote to approve the report of the subcommittee.

Mr Randy R. Hope (Chatham-Kent): I so move.

The Vice-Chair: Moved by Mr Hope, seconded by Mr Winninger.

All those in favour? Opposed? Agreed.

The committee adjourned at 1546.

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Akande, Zanana L. (St Andrew-St Patrick ND)

***Bisson, Gilles** (Cochrane South/-Sud ND)

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***Winninger, David** (London South/-Sud ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Hope, Randy R. (Chatham-Kent ND) for Mr Malkowski

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service



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of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 16 May 1994

**Standing committee on
administration of justice**

Courts of Justice
Statute Law Amendment Act, 1993

Chair: Rosario Marchese
Clerk: Donna Bryce

**Journal
des débats
(Hansard)**

Lundi 16 mai 1994

**Comité permanent de
l'administration de la justice**

Loi de 1993 modifiant des lois en ce
qui concerne les tribunaux judiciaires

Président : Rosario Marchese
Greffière : Donna Bryce

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 16 May 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 16 mai 1994

The committee met at 1542 in room 151.

COURTS OF JUSTICE
STATUTE LAW AMENDMENT ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE LES TRIBUNAUX JUDICIAIRES

Consideration of Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act / Projet de loi 136, Loi modifiant la Loi sur les tribunaux judiciaires et apportant des modifications corrélatives à la Loi sur l'accès à l'information et la protection de la vie privée et à la Loi sur les juges de paix.

The Chair (Mr Rosario Marches): I call this meeting to order. We're here to discuss Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act. Before we ask our deputants to begin, there is a motion by Ms Harrington which I will ask her to read.

Ms Margaret H. Harrington (Niagara Falls): This is a matter which has been before the Legislature for the last three or four weeks that we, as the government and the opposition parties, want to deal with as quickly as possible. All three House leaders have agreed to this motion as of this morning. I would like to put it before this committee at this time and ask that you support this motion for our committee to deal with this issue as soon as possible, possibly even May 31, if that can be arranged.

The motion is that the standing committee on administration of justice consider the following:

(a) the role the government of Ontario can play in the control of:

- (i) the retail sale of ammunition,
- (ii) the private sale of ammunition, and
- (iii) ammunition purchased outside the province and country,

including mechanisms available to the provincial government and possibly amendments which the government of Ontario should urge the federal government to introduce; and

(b) community-based crime prevention initiatives which exemplify the partnership required among all members of society in communities throughout Ontario.

The committee will meet for a period of three weeks. Witnesses will be invited to appear before the committee from a list of witnesses selected equally from each of the three caucuses and from the general public to the extent time permits.

I would ask that possibly a subcommittee deal with both the scheduling and the list of witnesses.

The Chair: Okay, we could deal with that. All in favour of the motion? That's unanimous.

ASSOCIATION CANADIENNE-FRANÇAISE
DE L'ONTARIO

Le Président : On va commencer. Bonjour, Monsieur Lévesque et Monsieur Tanguay. C'est un plaisir de vous avoir ici aujourd'hui, l'Association canadienne-française de l'Ontario. Monsieur Tanguay, voulez-vous commencer ?

M. Jean Tanguay : Oui. Premièrement j'aimerais, au nom de la communauté franco-ontarienne, remercier les membres du comité et sa présidence d'avoir accepté de nous recevoir au tout début de votre session, de vos rencontres avec les différentes communautés en Ontario.

Ça me fait plaisir de revoir certains visages ; ça fait quand même quelques mois que je ne les ai pas vus, mais dans d'autres circonstances, nous avons eu l'occasion d'échanger.

Cet après-midi, je suis accompagné de M^e Gérard Lévesque qui, nécessairement, est membre de l'Association canadienne-française de l'Ontario depuis sa naissance. Il est en même temps aussi membre de l'Association des juristes d'expression française de l'Ontario. Comme vous le savez, en étant président de l'Association canadienne-française de l'Ontario, je ne prétends pas être un spécialiste dans le domaine juridique. Donc, afin de pouvoir m'appuyer, j'ai demandé à M. Lévesque de m'accompagner.

J'aimerais, avant de commencer, aussi demander au Président du comité de bien vouloir faire une petite correction. Dans le texte que vous avez ici, «standing committee on administration of justice», vous m'avez donné un titre que je n'ai pas. Nécessairement, vous avez dit «M^e Lévesque». C'est bel et bien ça ; il est un avocat. Mais moi, je ne suis qu'un simple professeur, donc il s'agirait de dire tout simplement M. Tanguay. Je vous remercie de cette attention.

C'est avec un intérêt que nous avons pris connaissance du projet de loi 136, Loi modifiant la Loi sur les tribunaux judiciaires et apportant des modifications corrélatives à la Loi sur l'accès à l'information et la protection de la vie privée et à la Loi sur les juges de paix.

Nous remercions le gouvernement pour avoir tenu compte de la dualité linguistique de l'Ontario lors de la rédaction de plusieurs dispositions de ce projet de loi. Nous espérons que ce débat en comité permettra l'amélioration de certaines dispositions afin de les rendre conformes au fait que le français et l'anglais sont les deux

langues officielles des tribunaux de l'Ontario. Nous vous remercions pour cette occasion de participer aux travaux de votre comité et nous souhaitons que vous évalueriez à juste titre nos recommandations.

Par le paragraphe 43(3) du projet de loi, les annexes 1 et 2 de l'article 126 de la Loi sur les tribunaux judiciaires seraient abrogées et remplacées par une liste énumérant les régions qui étaient déjà mentionnées, d'une part dans la Loi et d'autre part dans un règlement pris en application de cette Loi.

Le paragraphe 43(3) ne change donc pas l'état du droit : il présente le statu quo, c'est-à-dire les endroits de la province où les citoyens peuvent présentement obtenir un jury composé de personnes parlant français et anglais et où une partie peut, sans avoir obtenu le consentement des autres parties, déposer des actes de procédure et d'autres documents rédigés en français.

L'ACFO recommande d'ajouter à cette liste la région de London. Les tableaux de Statistique Canada indiquent qu'en 1991, il y avait 5975 francophones dans l'agglomération urbaine de London. Nous demandons qu'une concentration aussi importante soit inscrite aux annexes de la Loi.

L'ACFO recommande d'ajouter à cette liste aussi la région de Kingston. La communauté francophone de la région de Kingston est vouée à augmenter considérablement, dans un avenir immédiat, à la suite de l'annonce de la fermeture du Collège militaire royal de Saint-Jean. Il convient donc d'assurer dans cette région un minimum de services juridiques en langue française.

Par l'article 16 du projet de loi, plusieurs articles de la Loi sur les tribunaux judiciaires seraient abrogés et remplacés par d'autres. Le texte de ce qui deviendrait les nouveaux paragraphes 51.2(3) et (4) de la Loi indique qu'à la suite d'une plainte portée en français ou en anglais contre un juge provincial, la médiation et l'audience du Conseil de la magistrature seraient menées en anglais. Cette situation nous apparaît contraire au statut des deux langues officielles des tribunaux de l'Ontario.

1550

L'ACFO recommande que le texte des nouveaux paragraphes 51.2(3) et (4) soit révisé afin de permettre la tenue de médiation et d'audiences du Conseil de la magistrature dans l'une ou l'autre des deux langues officielles des tribunaux de l'Ontario.

Nous constatons que l'article 48 du projet de loi incorporerait à la Loi une partie de la convention cadre avec les juges regroupés sous les associations portant les noms unilingues anglais suivants : the Ontario Judges Association, the Ontario Family Law Judges Association, Ontario Provincial Court (Civil Division) Judges' Association.

L'ACFO recommande que le comité de l'administration de la justice de l'Assemblée législative de l'Ontario invite la direction des associations de juges à doter leurs organismes de noms dans les deux langues officielles des tribunaux de l'Ontario.

Le 5 janvier 1994, le premier ministre du Canada confirmait à l'Association des juristes d'expression française de l'Ontario que le gouvernement fédéral serait

grandement favorable à l'octroi de garanties constitutionnelles à la langue française en Ontario. Nous remercions l'AJEFO d'avoir publié le texte de cette lettre dans l'édition du 18 février 1994 du bulletin L'Expression. Remarquez que nous avons ajouté à votre texte la copie de cette lettre parue dans l'édition du bulletin de L'Expression.

Tout au long de la campagne qui a précédé l'élection du 25 octobre 1993, M. Jean Chrétien a indiqué qu'un gouvernement formé par le Parti libéral du Canada n'initierait pas de discussion dans le dossier constitutionnel. Le texte du 5 janvier a le mérite de faire savoir que non seulement le fédéral n'est pas contre le fait qu'un autre palier gouvernemental entreprenne une initiative dans le domaine constitutionnel, mais il s'engage à y répondre favorablement.

Le paragraphe 16(3) de la Charte canadienne des droits et libertés présente ainsi une invitation permanente à travailler à l'évolution des droits linguistiques :

«16(3) La présente Charte ne limite pas le pouvoir du Parlement et les législatures de favoriser la progression vers l'égalité de statut ou d'usage du français et de l'anglais.»

Afin de favoriser des initiatives à cet égard, l'article 43 de la Loi constitutionnelle de 1982 prévoit une procédure souple : une modification des dispositions constitutionnelles relatives à l'usage du français ou de l'anglais dans une province est faite par une proclamation autorisée par les résolutions du Sénat, de la Chambre des communes et de l'Assemblée législative de cette province, ce qui revient à dire que, pour reconnaître des droits constitutionnels aux membres de la communauté franco-ontarienne, on n'a pas besoin de l'appui de l'Assemblée législative d'autres provinces, par exemple ; il suffit d'avoir une majorité de votes à cet égard à l'Assemblée législative de l'Ontario et dans les deux chambres du Parlement.

En vertu du paragraphe 46(1) de la Loi constitutionnelle de 1982, l'initiative des procédures d'une telle modification appartient à l'Assemblée législative de l'Ontario. Le premier ministre de notre province devrait-il s'engager dans cette direction ?

Si on lit l'édition du 26 novembre 1981 du Journal des débats de la Chambre des communes, on peut constater que M. Rae s'est engagé dans cette voie avant même de devenir chef du Nouveau Parti démocratique de l'Ontario et premier ministre de la province. De plus, le 3 décembre 1992, alors qu'il était, au Collège Glendon, l'invité de l'Association canadienne-française pour l'avancement des sciences, M. Rae a affirmé que si le Québec modifiait sa loi sur l'affichage, il serait alors possible pour l'Ontario d'envisager une reconnaissance constitutionnelle des droits linguistiques. Le Québec a modifié cette loi au cours de l'année 1993. C'est maintenant au tour de l'Ontario de poser un geste de nature à favoriser l'harmonie linguistique.

L'ACFO recommande que le comité sur l'administration de la justice invite le gouvernement ontarien à amorcer le processus visant à faire adopter une modification bilatérale octroyant des garanties constitutionnelles à la langue française et à la langue anglaise en Ontario.

Depuis 1971, année où le premier ministre Robarts avait indiqué que l'Ontario adhérerait à des dispositions linguistiques constitutionnelles, notre province a fait un progrès important dans le domaine des services en français. À notre avis, il est possible d'inscrire dans la Constitution un minimum de droits linguistiques pour les citoyens de l'Ontario, sans soulever un débat acrimonieux.

Agir ainsi serait une mesure d'équité à l'égard de la population de l'Ontario et démontrerait un leadership national pour ce qui est de la reconnaissance des droits de la minorité. Cela aurait également comme conséquence de diminuer la possibilité que, à l'occasion du nouveau débat d'unité nationale qui s'amorce au Québec, soit utilisé l'argument à l'effet qu'en matière de droits linguistiques constitutionnels, l'Ontario est en retard de 127 ans sur le Québec.

Monsieur le Président, Mesdames, Messieurs, on vous remercie infiniment de cette oreille attentive.

Le Président : Merci, Monsieur Tanguay. Monsieur Lévesque, est-ce que vous avez quelque chose à ajouter ?

M^e Gérard Lévesque : Seulement si les membres du comité ont besoin de clarifications sur un aspect ou un autre de nos recommandations.

Le Président : Okay, on va commencer. Any questions for the deputants?

Mr David Tilson (Dufferin-Peel): The issue with respect to Bill 136 containing language that the council have statutory authority to subpoena documents and witnesses, depose witnesses and hire competent staff is silent in the bill. Is that what you're saying?

M^e Lévesque: Could you repeat the question?

Mr Tanguay: What page?

Mr Tilson: Oh, I misunderstood.

M^e Lévesque: If I could just clarify, I think sometimes it's not easy to see if the bill changes the act as to a region where we can use both languages for a document to the courts without prior permission of the other side. Actually, the section brought by the bill doesn't give new rights.

C'est le statu quo. On fait juste se remettre dans le projet de loi ce qui est déjà dans la Loi et ce qui est dans un règlement pris en application de la Loi. Ce qui est apporté par l'Association aujourd'hui, c'est d'ajouter deux autres régions où, à notre avis, ce serait important de pouvoir avoir la même possibilité de procéder avec des documents et des jurys bilingues.

Mr Gary Malkowski (York East): Excuse me. Could you repeat that? There wasn't a translation for that in French.

The Chair: It was in English. I'm sorry.

Ms Zanana L. Akande (St Andrew-St Patrick): Half of it was in English and the other half was in French.

Mr Robert Chiarelli (Ottawa West): She was translating it but it wasn't coming through.

The Chair: Okay. Would you mind repeating that, please?

M^e Lévesque : Le projet de loi ne change pas les régions où, à l'heure actuelle, les citoyens peuvent utiliser les deux langues lors du dépôt en cour d'actes de différentes procédures et pour les jurys bilingues. Le projet de loi consolide les régions qui sont énumérées, d'une part dans la Loi sur les tribunaux judiciaires et d'autre part dans un règlement pris en application de cette Loi-là.

Ce que l'Association propose à ce niveau, c'est d'ajouter deux autres régions où à notre avis le nombre est suffisant pour accorder le droit de déposer de tels documents dans l'une ou l'autre des deux langues officielles des tribunaux de l'Ontario.

1600

The Chair: Seeing no other questions—

Mr David Winninger (London South): I have a comment. Je vous remercie pour votre députation. Je voudrais dire quelque chose au sujet des recommandations 1 et 2. Comme vous le savez, cette décision est dans le «purview» du ministre délégué aux Affaires francophones. Il nous dira si le cabinet a pris la décision qu'on ajoutera London et Kingston à la liste dans l'annexe de la Loi. Est-ce que vous comprenez ?

M. Tanguay : Oui, nous souhaiterions que vous ajoutiez ou que vous recommandiez d'ajouter London et Kingston dans le projet de loi que vous êtes en train d'étudier à ce moment-ci, car ça encouragerait peut-être davantage le cabinet et le ministre délégué aux Affaires francophones, M. Pouliot, à précipiter sa décision qui est sur son bureau, ou une possibilité de décision, en fonction de reconnaître ces deux régions comme régions désignées.

Vous avez l'avantage, dans la dimension judiciaire en Ontario, d'avoir cette reconnaissance officielle des deux langues, en Ontario, depuis 1984. Donc, la reconnaissance judiciaire en Ontario a même précédé de deux ans l'implantation ou la déposition ou la création de la Loi sur les services en français en 1986.

M. Winninger : Je comprends. Nous tenterons de refléter la décision du cabinet dans notre projet de loi.

Le Président : Je vous remercie beaucoup pour votre députation aujourd'hui.

M. Tanguay : Est-ce que je pourrais ajouter un demi-dernier commentaire au sujet de la recommandation 3, afin que ce soit bien saisi ? Lorsqu'on parle de médiation, à un certain moment donné nous avons nos droits linguistiques, mais quand ça arrive au niveau de la médiation, on a le droit d'aller dans le petit coin parler en français, s'expliquer en français. Mais quand arrive la vraie médiation, nos droits nous sont enlevés dans la même salle, au même moment, dans un cas de médiation.

Nous aimerions que le comité pense sérieusement recommander ce que moi, comme citoyen franco-ontarien, j'appelle une petite grande injustice. Merci beaucoup.

Le Président : Merci à vous. M. Winninger a quelque chose à ajouter.

M. Winninger : Nous avons envie de coopérer avec le juge en chef pour faire un amendement à ce projet de loi qui peut-être vous satisfera.

M. Tanguay : On vous remercie.

M^e Lévesque : On peut noter que c'était un peu équivoque que le projet de loi enlève la discrétion d'utiliser le français alors que, lors de certaines audiences du Conseil de la magistrature, il se peut que toutes les personnes soient bilingues et veulent procéder dans l'une ou l'autre des deux langues, surtout que le juge en chef actuel c'est celui qui, en 1984, a fait justement que la Loi sur les tribunaux judiciaires soit modifiée pour faire reconnaître le français comme une des deux langues officielles des tribunaux. C'était un peu cocasse qu'on lui retire cette possibilité-là par le projet de loi.

Le Président : Merci encore.

MATTHEW YEAGER

The Chair: I would call upon Mr Matt Yeager, criminologist. We welcome you here today. Like the previous speakers, we have half an hour for your presentation. I hope you leave as much time as you can for the different caucus members to ask you questions at the end.

Mr Matthew Yeager: Okay. It's my general approach to be as brief as possible, Mr Chairman.

My interest in this bill is primarily in the disciplinary section of the law as is proposed. As a criminologist and as a clinician, I've had a long-time interest in white-collar or government misconduct, and that's perhaps the main reason I'm here today. As such, I think you'll find my views as a non-lawyer perhaps to be somewhat different than the majority of the witnesses you're going to hear.

At the outset, let me indicate that in general I endorse this legislation and I hope you pass it. Therefore, I would like to just raise a couple of issues that are of interest to me.

Family law is not an area of my special expertise. Nevertheless, I do endorse the committee's creation of a Family Court throughout Ontario. For the purposes of better management, however, I would recommend that the committee combine the two community advisory committees. I don't see any point in having two different community advisory committees. I think you can simply combine them into one committee.

I will return to this issue of resources a little bit later on because I don't think the jurisdiction of a committee devoted to resources should be confined only to Family Court.

With respect to the creation of a Deputy Judges Council, which is found in section 33, I strongly urge the committee to abolish this section in the name of efficiency. The function of such a council is better served if the Ontario Judicial Council is also given jurisdiction over deputy judges sitting in the various small claims courts. Again, I think you can be a little more efficient in this legislation by simply combining some of the committees you've created and collapsing them, because I don't think you need to do this, with respect to the cost implications.

I very much like the creation of a Judicial Appointments Advisory Committee, especially the fact that it has seven members who are neither lawyers nor judges. A minor point, however, is that as a criminologist, at this point I don't understand why you have provided that a lawyer must have at least 10 years of bar membership

before he or she can be considered for judicial appointment. Why not consider five years to encourage younger members of the bar to apply?

With respect to the Ontario Judicial Council, my first recommendation is that you increase the number of public members on the council from four persons, as proposed in the law, to seven, in order to balance the number of judges and lawyers appointed to the council. I make this recommendation because I think it's consistent with the composition of the appointments advisory committee, in which you have balance, and also because I firmly believe the public needs to have a greater role in the management of the judicial system and in the discipline of judges in the province of Ontario.

Permit me now to turn my attention to the process of investigating a complaint against a provincial or deputy judge. Unless I am misreading the act, it is not clear that the council, as proposed in Bill 136, has grand-jury-like powers to investigate complaints. In my opinion, Bill 136 should contain language in the statute, not leaving it for regulations but in the statute, giving the council statutory authority to subpoena documents and witnesses, depose witnesses, hire competent staff and have staff with backgrounds in investigations.

I say that because the area of white-collar crime and government misconduct is generally one which is extremely difficult from an investigative point of view. Unless you give the council actual statutory authority to subpoena documents and to have some grand jury powers, it will in many cases be very, very difficult for the staff to prosecute an investigation against a judge or a deputy judge where there are accusations of serious misconduct.

With respect to all complaints, it's my opinion that it should be the policy of the council that, at the very minimum, written reasons should be given to each complainant when dismissing a complaint that has been filed. Thus, I disagree with subsection 51.6(11), that the council may dismiss a complaint with or without a finding that it is unfounded. In part, I think this should be done to respond to the complainant as well as to allow other observers to evaluate the work of the council.

Ms Christel Haec (St Catharines-Brock): The bell is ringing for a vote.

The Chair: I'm sorry; we're just trying to determine whether there's a vote. We assume there is, but we don't know what time. We're just going to check that out. I think we should be in there for a vote. It's best to recess for a brief time.

Mr Yeager: Would you like me to continue or shall I stop?

The Chair: No, please, you should stop. We're going to recess for approximately 10 minutes.

The committee recessed from 1611 to 1627.

The Chair: I'll call this meeting back to order. Mr Yeager, we'll resume where you had left off.

Mr Yeager: Just to basically review, my primary area of interest in this bill is in the judicial disciplines section. I've made a couple of recommendations to the committee.

The first recommendation, just to summarize, is to

increase the number of public members from four to seven.

My second recommendation, on page 3 at the bottom, was to give the council statutory authority to conduct what I regard as an appropriate and competent investigation. In the area of government misconduct by judges, it is my opinion, and I think it's an opinion shared by a lot of other bodies that do this work, that a council needs to have subpoena power and the ability to depose witnesses and so forth to prosecute these kinds of matters that are extremely difficult to take on.

Last, I made a comment about simply the integrity of the process. It was my feeling and suggestion to you as committee members that every complainant who files a formal complaint to the council should be entitled to a written answer, especially if their complaint, as will be the case in most of the cases, is dismissed. A member of the public, whether they are a lawyer, a crown attorney or simply a litigant, should be entitled to an explanation as to why their complaint was dismissed. I hope that section I made reference to, section 51.6, will be slightly amended by you in markup so that you will ensure that each complainant does get some kind of response.

I also think it's important to have that so that outside individuals can evaluate the work of the council and examine exactly how many cases are being dismissed, why they're being dismissed, what is the nature of the complaint and so forth. It will give us a better idea to be able to evaluate the integrity of the council since it's assuming this new role.

I confess to being a little confused about all the secrecy in the bill concerning the identity of judges. In subsection 51(6), the council will issue an annual report, "but the report shall not include information that might identify the judge or the complainant." Do you really mean to say that if a judge is formally disciplined by the council or even removed from the bench, his or her name should remain a secret? Similar language can be found in other sections of the bill, particularly with respect to mediators. Except, of course, for actions that are dismissed for cause, the disciplinary system, in my opinion, should be open to the public. Therefore, except for complaints which are dismissed, the identity of a judge who is formally disciplined or removed from office should be made public by the Judicial Council in its annual report.

Again, I think this is simply a matter of having some public accountability to the citizens of Ontario, that if there is a disciplinary problem, the public is entitled to know what the problem was and who was disciplined. By the way, it would be very helpful if the council's annual report contained a summary of the number of complaints filed and their resolution by type of complaint and by type of complainant. Again, this allows for oversight from people who want to examine the work of the council in this new area.

On the issue of holding formal hearings under the act, I would ask the committee to consider adding another word or a similar legal word right before the phrase "exceptional circumstances" to give emphasis to the fact that almost all disciplinary hearings involving judges

should be open to the public.

Finally, since it's my understanding that the impetus for this legislation is the result of certain pending actions against a provincial judge from Toronto, I don't understand why section 51.8 has been written to exclude this particular judge from potentially receiving an intermediate punishment other than removal from office. In my opinion, the transition language should be rewritten to permit a recent complaint filed before the bill comes into force to be considered under the new provisions at the discretion of the Judicial Council. You are adding a whole new range of intermediate punishments between dismissal and removal, and it seems to me that if there are pending complaints right now, it would be inappropriate, since you're amending the punishment actions, to not allow those complainants to have some remedy, or at least to have some remedy at the discretion of the Judicial Council.

There are some aspects of this bill that are missing that I think raise some philosophical questions. Let's talk about performance evaluations. One of the strong parts of this bill is the addition in statute of performance evaluations for judges. That's an excellent approach, but I would suggest to the committee that there's a small flaw in the language, particularly with respect to section 51.11, where you prohibit any information from performance evaluations from being allowed to be used in a disciplinary proceeding.

One of the problems that almost all bodies have had in looking at judicial discipline is that they tend to be just reactive—that is, they tend to simply react to complaints by members of the public or prosecutors, crown attorneys or lawyers—and sometimes the systems we set up are not proactive.

One of the great things you've done in this bill is put in place a system that has performance evaluations, which potentially enables you to be proactive and to be preventive in attempting to identify judges who may be having some problems and intervening before you even have to bring them before a disciplinary procedure, whether it's because they're disabled or it's because there are other, more serious problems in their conduct. I would ask you as a committee not to prohibit the use of performance evaluation information as possibly being used in a disciplinary proceeding, because that's a way for a council to pursue proactive investigations as opposed to simply relying on whatever level of complaints come in from the public.

A major failing of disciplinary systems for judges is the lack of any resources devoted to public education and assistance in making complaints. Your bill doesn't say much about adequate resources, and I predict this will be a problem in the future. Why not indicate that one function of the Judicial Council is to help citizens file their complaints? You could easily add some language to do that in your law.

There's a philosophical issue here that I'm not totally certain about, but it's an interesting one that you might want to raise in debate in the committee. That is, is it perhaps appropriate for the council to have some jurisdiction over other members in the judicial system? I'm

referring here to clerks, bailiffs, court reporters, official guardians and referees. You may want to think very seriously about whether it is a good idea, and it may be a good idea, to amend this legislation so that the council can have jurisdiction over some of the other very significant actors and actresses in this system, not necessarily just provincial judges and/or deputy judges.

Last, I get back to the issue of community resources that I raised initially a few minutes ago under the family law section. It's to simply raise an idea with respect to what would be very, very desirable, and I make reference to title 18 of the United States code, which allows a federal district court judge or even a Court of Appeals judge to request additional information at the time of sentencing by spending additional resources to investigate options in the community.

Ladies and gentlemen, you are spending \$52,000 a year to lock up people in the reformatory and over \$90,000 a year to lock up juvenile offenders under closed custody in this province. Those costs are probably some of the highest costs throughout Canada. I could tell you as a criminologist what the research says about those costs and those rates of incarceration.

The research says—and I'm not talking about what the newspaper articles say—that we cannot show that if you lock up a lot of people, you're going to have safer communities and lower crime rates. The research doesn't document that. So what you end up doing is spending a lot of money at the end of the system, which is the prisons, the reformatories, and sometimes you don't spend enough money up front where judges could use it to do some other things with people and perhaps better use the community to punish and manage and sanction offenders who come before the judges.

I've taken more time than I deserve. I thank you for your time, and perhaps I can engage some members of the committee in a discussion about at least one or two of my ideas. Perhaps the issue of giving the judicial council subpoena power might prick someone's interest. So I'm here.

The Chair: Thank you, Mr Yeager. We have some questions from some members. Mr Tilson, do you have a question?

Mr Tilson: Just on numbers, Mr Yeager, the comments you made recommending that the qualifications to be a provincial court judge be reduced to five years as opposed to 10: My understanding of the principle is that the emphasis is on excellence, which of course is what this bill is all about, the emphasis on excellence. In other words, judges for whatever reason have felt that the more experienced an individual should be, the better; in other words, that five years obviously doesn't have the experience of 10 years.

I guess the other issue with respect to numbers is your comment as to the numbers on the judicial council. I think there are, what, 14 in total?

Mr Winninger: Yes.

Mr Tilson: Mr Winninger said yes. So your recommendation is that the numbers of public be increased to—

Mr Yeager: Seven.

Mr Tilson: As opposed to?

Mr Yeager: Four.

Mr Tilson: I suppose the same principle, what we're requiring, is that individuals, the public, should be more involved: no question. But there's that issue of excellence, that issue of having the most qualified people, the people who understand issues, whether on the bench or on a judicial council. So I guess I'd like you to elaborate on those two issues.

Mr Yeager: Basically, you've opted for a unitary system of discipline; that is, you've combined both the investigatory function and the disposition function in one agency. That's essentially a unitary system of discipline.

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To give you an example, there are some states south of the border that have a dual system. They have one agency that investigates and brings the charge and another agency that adjudicates the charge. It's my argument that the extent to which you enhance public participation in this endeavour by selecting public members, as you would carefully select public members for any kind of board that you appoint, including the current judicial evaluation committee, will add legitimacy to the public's belief that this isn't an old boys' club looking after its own interests. I think that's a very serious problem, or at least an image problem, with respect to a disciplinary system. You don't want to give that impression to the public.

Mr Tilson: At the same time, though, of course—is there time?

The Chair: One last question because we are running out of time.

Mr Tilson: Again, it's the issue of being able to understand, whether you're talking numbers of years that you're on the bench—quite frankly, I would prefer the 10 as opposed to five, and similarly with the numbers on the Judicial Council. It may well be that to understand complaints, and there could be a whole wide range of complaints, one need be able to understand not only human issues but complicated legal issues. No question there should be representation, but should it be equal?

Ms Haeck: Just a quick query. In making your presentation—and I was looking through it, scanning it trying to find if you made reference to it in written form or just verbally—you made the linkage of white-collar crime and government crime and then the judiciary. The way I heard you at one point, it sounded as if the judiciary was sort of part of government. If anything, it's brought home to MPPs on a daily basis that there's a very clear separation between the courts and what happens in this place. I just wanted to clarify in my mind that this is a point you recognize as well.

Mr Yeager: I used the term in a generic sense, but you're correct, and I stand corrected on that distinction. We tend to use the phrase "white-collar crime" to encompass a wide variety of institutions and sometimes we don't separate out the functions.

Mr Winninger: I'd like to thank you for taking what appears to be a great deal of time to consider in detail the provisions of Bill 136. Since Mr Tilson already engaged

you in discussion around increasing the number of public members of the Judicial Council, I won't belabour that particular point except to say there is a concern that the judiciary continues to be independent. There is a desire that the judiciary, with public participation, ultimately will have the majority in terms of disciplining its own members. Your view may be slightly different, and it's certainly valuable to have your perspective on that.

Mr Yeager: If you're going to have an equal number of public and lawyer members on the appointments committee, it seems to me it behooves this committee, as a drafting committee, to also recognize that the addition of public members adds legitimacy to the work of the council. I think it's a mistake in this day and age to assume that only professions and members of a profession can regulate themselves. I think it's very, very helpful to have members of the public who can explain this to complainants, who can explain this to the audiences at large in various communities across Ontario.

Although I realize this view is perhaps a little different than most of the witnesses', I hope you understand what the basic thrust of my concern is and what I would like to have you do with this particular piece of legislation during markup.

Mr Winner: I agree with you in part and I think that's why we did increase the number to four, to provide that very valuable public input in terms of discipline.

In terms of recommendation 4, the Judicial Council has at present, under the Statutory Powers Procedure Act, the right to subpoena. In fact, I understand that, while not frequently, it has exercised that power under the Statutory Powers Procedure Act in the past. So if you haven't already, you might want to take a look at that act and see how the two are interrelated.

In terms of recommendation 6, it is a practice, where a complaint proceeds to a hearing, that the decision will be made in writing, with appropriate reasons. If indeed a judge is removed from the bench, that would have to be done through order in council and with the assent, as I understand it, of the Legislature. So it would be public that the particular judge has been removed from the bench; it would no longer be confidential.

Mr Yeager: I don't think my comments with respect to item 6 pertain so much to formal removals, because that goes to the Attorney General of Ontario. The majority of your complaints will probably result in dismissal, and in my opinion that's probably correct. There are other avenues, such as an appeal to the Court of Appeal, or if there's no jurisdiction, there will be other explanations; some will be harassment. But I think it's extremely important for the legitimacy of the council that you respond to each and every complainant by giving them a reason in writing as to why the case was dismissed and not having language in your statute, as you do now, that says they don't have to do that.

Mr Winner: We've certainly made a note of your concern, and I thank you for your input. It's been very valuable.

The Chair: Mr Yeager, thank you for taking the time to come and make your presentation to us today.

Mr Yeager: My pleasure.

JACOB ZIEGEL

The Chair: Professor Jacob Ziegel, faculty of law, University of Toronto. Welcome, Mr Ziegel.

Dr Jacob Ziegel: Thank you very much, Mr Chairman, mesdames et messieurs. I greatly appreciate the opportunity to come and make a few presentations before you this afternoon. I have prepared a draft brief. Unfortunately, it's not yet in final form, but I will undertake to make a final brief available to you later this week.

Given the time constraints, I want to confine my remarks to the following and related aspects of Bill 136. I'd like to talk a little bit about the role and structure of the Judicial Appointments Advisory Committee. I want to talk about the promotion of provincial court judges to the General Division bench. Thirdly, I want to talk a little about the provisions in the bill about the remuneration of provincial court judges. Finally, I have a couple of remarks about the appointment of deputy judges to the Small Claims Court.

With respect to the Judicial Appointments Advisory Committee, I want to emphasize from the beginning that I overwhelmingly support the provisions in section 16 to give statutory form to the Judicial Appointments Advisory Committee, established in 1988 on the initiative of Ian Scott, a former Attorney General. In my view, the establishment of the committee and its composition in terms of reference are of key importance for the following reasons.

First, they are a vast improvement on the old system and substitute the criteria of merit and suitability for the patronage system that did so much damage under the earlier systems.

Second, new provisions constitute an important precedent for the other provinces and for the federal government. Third, they enhance public confidence in the integrity, competence and suitability of provincial court judges.

Finally, they rightly emphasize the importance of provincial court judges in the administration of criminal law and family law in the province.

The heart of the statutory provisions lies in the broad representativeness of the members of the Judicial Appointments Advisory Committee, the careful screening and personal interviewing of applicants, the compilation of a short list of candidates for submission to the Attorney General, and the obligation of the Ontario government to limit its appointments to names appearing on the short list.

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These criteria may appear commonsensical and self-evident, particularly in a country that prides itself on the rule of law and the independence of the judiciary, but they're still a long way from being accepted by the federal government in a substantial number of other provinces.

I go on to say in my brief that the vast difference between the system of the advisory committee that's provided for in Bill 136 and the one that obtains at the present time at the federal level is that the federal

advisory committees merely serve a screening function, leaving the federal government with maximum discretion to continue to appoint persons as it sees fit so long as they pass a minimum threshold of acceptability, whereas the whole thrust and object of the Ontario committees is to enable the best-qualified individuals to be appointed, best-qualified in the eyes of an independent committee, not as seen through the patronage-driven eyes of the federal cabinet.

What in fact I am urging this committee to do, what I'm urging the Ontario government to do, is not only to take much satisfaction in the Ontario system but indeed to serve to encourage and persuade the federal government to follow the Ontario precedent. I appreciate that one level of government in Canada does not tell the other level of government what it should do, but I think there is a justifiable exception in the area of judges. Ontario judges apply federal law as much as provincial law, just as the federally appointed judges apply provincial law as much as federal law. We pride ourselves in Canada on having an integrated, unitary judicial system. We have a unitary appellate structure whose apex lies with the Supreme Court of Canada.

In short, what I am saying is, it is as important for the provinces to know how judges are appointed at the federal level as it is for the federal government to know how judges are appointed at the provincial level. The two aspects are interdependent. I deem it entirely appropriate for the Ontario government, for this committee, to send a strong message to the federal government saying it's time for the federal government to put its own house in order as well so far as the process for the selection of federally appointed judges is concerned.

Turning to some of the details of the Judicial Appointments Advisory Committee, I do have some relatively minor amendments to offer to section 16 of the act.

First, with respect to the composition of the committee, subsection 43(2) presently provides for nominations by the Canadian Bar Association, Ontario branch, the Law Society of Upper Canada and by the County and District Law Presidents' Association. One important constituency that is wholly omitted is the law professors in Ontario. Obviously I'm biased, but I admit it. It seems to me that they constitute an important constituency. I wish to recommend that they be included among the organizations that should be empowered to nominate a representative to the Judicial Appointments Advisory Committee.

Some concern has been expressed in some quarters, a concern I share, about the statutory entrenchment that a preponderant number of members of the advisory committee be laypersons. This comes about because of the provisions in clause 43(2)(c), I think, which says that the Attorney General is to nominate seven non-lawyer members of the committee. I think that's too rigid. I would leave the discretion with the Attorney General to appoint seven members, but I don't think he should be confined to non-legal members. I think he or she should have complete discretion as to the selection of members. They may for the most part be laypersons, but he may decide also that there are other highly qualified people with legal backgrounds who'd make admirable members.

I think he should be free to make that choice.

With respect to the advertising of vacancies on the provincial bench, section 43(8)4 seems to make it mandatory for the advisory committee to advertise whenever there are vacancies. Again, that seems to be unnecessarily rigid. There may be circumstances where the committee has already compiled such a backlist of highly qualified candidates. There seems little point in advertising again, particularly when it may have advertised within a short span preceding the creation of new vacancies.

My recommendation is that the committee should be left free to dispense with advertising if the committee deems it to be unnecessary in a particular circumstance.

The next idea was the question of the appointment of part-time judges after their retirement. This is also dealt with in section 44(2). The present system is that the Chief Judge of the provincial court, in his apparently unfettered discretion, can decide whether or not to appoint a retiring judge to continue to serve in a part-time capacity. The concern that I have is that where there are personality differences or difficulties between the Chief Judge and a retiring judge, it may give rise to an appearance of bias, an appearance that ought to be dispelled.

My preference therefore would be to leave decisions with respect to the appointment of part-time judges to a small committee comprising the Chief Judge and normally the Attorney General and a nominee of the Judicial Appointments Advisory Committee.

I now turn to a subject that's received very little attention, at least so far as I know, but I think it's worthy of much more discussion than it has received, and that is promotion of provincial court judges to the General Division of the Ontario Court. I think it's a well-known fact that many provincial court judges do in fact apply for a promotion to the General Division, for a range of reasons—partly prestige, partly also because the perks and the remuneration are much better for a federally appointed judge than a provincial judge. Salaries are almost 25% higher, the pensions are still more substantially better and of course there is also the measure, the very significant measure, of prestige.

Leaving aside the question of whether there should be such disparity in the terms of remuneration between federally appointed judges and provincially appointed judges, and I'm one of those who has long been troubled by the excessive disparity, there is a question also of the system for promoting provincial court judges. In fact, there really is no proper system. Until recently, it was impossible for a provincial court judge to throw his or her hat into the ring by applying to the commission for judicial affairs.

The federal Minister of Justice recently announced that the system will be changed, that in future elevations would take place informally, by consultations between the Minister of Justice and the provincial Attorney General and the Chief Judge of the provincial court.

I find the system too informal, too calculated to lead to bias, lacking in transparency. It seems to me therefore that provincial court judges should be assured of a more ostensibly fairer system that will consider provincial court

judges for potential promotion. I think it's right that they should be considered for promotion, just as it is right that members of the General Division should be considered for promotion to the Court of Appeal.

Once again, this illustrates the point I made earlier about the interdependence between the provincial court judges, the General Division judges and the Court of Appeal judges, all the way up to the Supreme Court of Canada, and that interdependence, in my view, should be reflected in our systems of promotion as well as in other respects.

My recommendation therefore is that there should be, once again, a small committee—I emphasize smallness—that would make recommendations annually to the Minister of Justice about those provincial court judges who are deemed to be—who have proven, by their performance on the bench—particularly suited and appropriate for elevation, and not only to the General Division. In some cases, it may be that they should be catapulted straight on to the appellate bench. I appreciate that some may think that I'm being hopelessly Utopian. I don't accept that. I think we may have to break some tradition-bound psychic barriers in our perceptions, but objectively speaking, I believe these recommendations are soundly based.

1700

Let me turn now to a hot topic, the compensation of provincial court judges. What Bill 136 does is seek to entrench a framework agreement negotiated a few years ago between the provincial government and the Association of Provincial Criminal Court Judges.

The expressed premise of this framework agreement is to assure the independence of judges in the Ontario legal system. If this means that judges must not be discriminated against, that their remuneration does not become a political football, I support the propositions wholeheartedly. However, if it means that judges may be treated more favourably than other public employees, then I say I have difficulties in accepting the framework agreement.

In short, what I am saying is that there are really two principles at play when we're talking about judicial remuneration: one is the principle of the independence of the judiciary and the other is the principle of equality before the law.

My concerns are not theoretical. Over the past couple of years, a variety of media commentators throughout Canada have noted the fact that there are some aspects of the remuneration of federal court judges that are very generous and very difficult to justify. I'm not suggesting this is true of the remuneration of provincial court judges in Ontario, but I am saying that it could become true if the framework agreement reproduced in the schedule to Bill 136 is retained in its existing form.

I believe the framework agreement needs to be amended so as to ensure that provincial court judges will not be treated more favourably than other public employees in comparable positions. To this end, I recommend, first, that a new criterion be added to section 25 of the schedule to read, "The salary and benefits paid

to other senior public employees."

If you look at section 25 you see that it rattles out a series of criteria, including changes in the cost of living and such things, but there's no reference to comparability. It seems to suggest that somehow one can isolate the remuneration paid to provincial court judges from the remuneration paid to other senior public employees, whether in the federal government, the university or elsewhere. As I indicate here, it seems to me the principle of equality before the law ought to require the remuneration commission to pay attention to this criterion as well as the others.

Secondly, I believe that clause 25(e) ought to be deleted in its entirety. What 25(e) provides at the moment is "That the government may not reduce the salaries, pensions or benefits of judges, individually or collectively, without infringing the principle of judicial independence." That sounds like motherhood. I believe it contains the seeds for much mischief for this reason: Ontario, as well as the other provinces, is going through an extraordinarily difficult financial period. Many of the provinces, including this one, had to roll back existing public employee salaries as well as other benefits. Many commentators have warned us that fringe benefits for employees, both public and private, will either have to be reduced in the near future or that contributions in the form of premiums and otherwise may have to be substantially increased.

As I read clause 25(e), the provincial government would not be able to apply such changes to provincial judges' remuneration without the unanimous consent of all the judges. My understanding is that last year the provincial court judges voluntarily agreed to be subjected to the social contract. I applaud them for their public-spiritedness. My concern is what would happen if on a future occasion, perhaps not so remote, provincial court judges took a different view and decided not to accept cutbacks and reductions that applied to other public employees in comparable positions. I think it would be unacceptable in terms of law, in terms of public policy, that any group of judges, whether here or federally, be treated more favourably than public employees in comparable positions.

It's for this reason that I think the principle of non-discrimination certainly means that judges should not be treated worse than other public employees. I don't think it means that they'd also be treated more favourably, and 25(e) as presently drafted would appear to lead to the suggestion that they may be left off in a better position than other public employees.

Let me conclude with just a couple of words about the last part of my brief, dealing with Small Claims Court and deputy judges. Small Claims Courts have traditionally been treated as the Cinderellas in the Ontario court system. I think this is unfortunate because as far as the overwhelming majority of consumers in Ontario is concerned, Small Claims Courts are the only courts that are accessible to persons with limited means and for small claims. They haven't always served this purpose and I don't think they do serve this purpose now, but this merely emphasizes my concern that the Small Claims

Court as a court has been much neglected.

The same applies with respect to the judges who serve on this court. There are only nine full-time Small Claims Court judges in the whole of Ontario for a population of close to 10 million. The rest are served by deputy judges. The system for appointment of deputy judges is, to put it mildly, highly informal. While we have now established a very formal, relatively complex procedure for the selection and appointment of full-time provincial court judges, we have retained a highly subjective and informal procedure for deputy judges.

The recommendation in my brief is that we need to have a more objective, somewhat more formal system in the appointment of deputy judges. Instead of leaving it up to the senior regional judge to make the appointment at his or her discretion, I think we need a small committee so as to give the process some degree of transparency.

Again, the salary paid to deputy judges is abysmal by any standards. My understanding is they only get \$230 a day, which on a six-hour day would amount to less than \$40 an hour. I think I'm right in saying that plumbers charge substantially more on an hourly basis than would be paid to deputy judges. There's that old refrain, "You pay peanuts and you know what you get." I can't help reflecting that the same may be true of what in my view would be grossly underpaid deputy judges. As far as I know, they're not entitled to any other benefits whatever.

In short, we need to take the Small Claims Court much more seriously. We need to review also the people who administer justice in the Small Claims Courts so as to give the Small Claims Courts and the judges who administer the justice in them a significantly stronger profile than they have at the moment.

The Chair: Thank you, Dr Ziegel. We have time for one question from each member, from each caucus.

Mr Winner: Just one comment, Professor Ziegel. We haven't met before, but we have spoken over the telephone and it's certainly a pleasure to hear from you again.

1710

Just in terms of your remarks around subsection 43(8), paragraphs 1 and 2: Paragraph 4, as you may have noted, allows the Judicial Appointments Advisory Committee to make recommendations from among candidates interviewed within the preceding year if there is not enough time for fresh advertising and a review process. So there is some discretion allowed the committee there. I take it, though, your point was more general in nature?

Dr Ziegel: I think it's still too rigid. You may have a situation where even within the year, the committee has already advertised with respect to locality, has received a large number of applications, feels satisfied that it has some excellent candidates and may feel that there's not much point in advertising again. I'm not saying they would reach that conclusion; all I'm saying is, if the committee in good faith believes there's not much point in advertising again, it should be free to dispense with advertising. It's a relatively small point.

Mr Winner: Thank you for sharing your views with the committee.

Mr Chiarelli: I want to thank you for your brief. You certainly have gone over the proposed legislation with a magnifying glass and have given us, I think, some new insights that will be very helpful to us when we look at clause-by-clause. But just very briefly, when you talk about the salary and benefits for provincial court judges and you talk about a comparable senior public employee, can you give me some examples of what you feel a comparable public employee might be?

I sense that judges are almost in a class by themselves in terms of their independence, in terms of their responsibilities within the justice system, and I just wonder what sort of comparative you would look at.

Dr Ziegel: I can give you two. One will be what senior counsel would obtain within the Ministry of the Attorney General, just below the Deputy Attorney General level. Another comparison, which may or may not appeal to you, is what a senior professor would get at a university such as the University of Toronto.

In the provincial context, it would probably lead one to conclude that the current salary being paid to provincial court judges is about the same as a senior counsel within the Ministry of the Attorney General, and I think that's entirely appropriate.

To put it the other way around, I think a senior counsel, particularly one who has served in the Ministry of the Attorney General for 20 years or more, would have a genuine grievance if he or she received less than a provincial court judge who, in many cases, might be younger than senior counsel in the Ministry of the Attorney General, say if you were an assistant deputy Attorney General. The converse would also hold true. Likewise, I think I would have some concern if I found that a provincial court judge is getting significantly more than the most senior professor at one of our senior universities.

That's what I mean by comparability. I don't buy it. Let me be frank. I think we ought to be very cautious about this doctrine of judicial independence. If the doctrine of independence means government mustn't interfere so as to influence a judge's decision, of course I'm with it. If it means that judges are to be treated better than anyone else, I'm afraid I have great difficulties in accepting it.

There is a certain impression abroad that if you repeat this slogan of judicial independence often enough, you can secure for judges treatment better than anyone else. I think we've reached the point in Canada where we've become much more sensitive about the issue. I think we're looking for fair treatment and we ought to be looking for non-discriminatory treatment, but judges shouldn't become a privileged group in terms of their remuneration.

Mr Tilson: I have one question, although I must say I can't resist commenting on and I appreciate your advocacy for law professors playing a part in the appointment to the Judicial Appointments Advisory Committee, although I will say that to my knowledge most law professors are members of the Law Society of Upper Canada and many in fact are members of the Canadian Bar Association, so that it's not that they would be

unrepresented, I suppose, any more than people in specialized parts of the profession.

It's just a comment which I doubt you'll respond to, but my question has to do with your comments on deputy judges, because this is one of the areas that gives me the greatest concern, specifically where there are claims for under \$500 that are not appealable. These people are certainly not doing it for the money. As you say, it's \$230-odd. They're not there to make a lot of money. Many of them look at it as charity or whatever. Litigation has got so out of sight, it's one way of dealing with small monetary amounts, although we've now gone up to \$6,000, which may make it worthwhile for some lawyers to go, but certainly in those smaller amounts.

I sense you're suggesting that the remuneration of Small Claims Court judges or deputy judges be increased. I have a fear of that as I have a fear for this whole process. In other words, can we afford that sort of thing? We're looking at mediation in other areas as opposed to litigation.

I have spoken to a number of deputy judges who have simply said that when they're doing it for nothing or next to nothing they simply won't put themselves up to that sort of scrutiny, particularly where there are claims under \$500 and this is the only way that people will get satisfaction, "I'll go the judge," as opposed to an appeal, which they don't have.

My question is, are you suggesting that the deputy judges or Small Claims Court judges be given a substantial increase in remuneration?

Dr Ziegel: Well, when we're talking about substantial, I would say that something more like \$350 a day would be more realistic. It seems to me you have to make up your mind. You either say to a guy, "You'll do it out of a sense of pro bono publico, out of a sense of public service, in which case we'll merely cover your expenses," or you'll say, "No."

Mr Tilson: But \$350 won't make any difference to \$230.

Dr Ziegel: Well, from \$230 to \$350 is still \$120. There may be some retired people out there who may need to supplement. After all, you don't expect provincial court judges who are serving part-time, after retirement,

to serve for peanuts. I suspect they're getting thousands, not just a few hundred. I'm struck by this disparity.

You talk in terms of a limit of \$500. My understanding was that the ceiling with Small Claims Court, even outside of Ontario, is significantly higher than \$500.

Mr Tilson: No, my understanding is that under \$500, the monetary amount, those cases are not appealable.

Dr Ziegel: That's a different point, right? But you're surely not saying that the provincial court judges are only empowered to hear cases where the amount involved is only \$500. I think their jurisdiction will be whatever the jurisdiction happens to be in their particular Small Claims Court, which surely will be significantly more than \$500.

My remarks on this point were not totally uninformed, because I've had some experience with the Small Claims Court and I've seen how some of the judges in the past have performed there. Let me emphasize that I'm not talking about any present incumbent. I've had some concerns about some of the people who have sat there in the past.

So I think there is some justification for saying, however little or much we pay them—I'm talking about the process of selection—I think we ought to be satisfied that they are appropriate people for that particular kind of function.

The Chair: Mr Ziegel, we thank you for coming. Thank you for the suggestions and recommendations you've made to this committee.

Dr Ziegel: Thank you, Mr Chairman.

The Chair: Before we adjourn, I just want to remind the subcommittee members that we will be meeting tomorrow at 3:15 to consider the other matter that we just dealt with, the motion that Ms Harrington has proposed today.

Mr Tilson: Mr Chair, just on that, do I understand that the meeting with the other two groups that are coming will still continue? Am I looking at the right day?

The Chair: That's right. We'll begin at four.

Mr Tilson: We'll begin at four.

The Chair: Yes. The committee is adjourned.

The committee adjourned at 1718.

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Murphy, Tim (St George-St David L)
- *Tilson, David (Dufferin-Peel PC)
- *Winninger, David (London South/-Sud ND)

**In attendance / présents*

Also taking part / Autres participants et participantes:

Winninger, David, parliamentary assistant to Attorney General

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service



Legislative Assembly of Ontario

Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Tuesday 17 May 1994

**Standing committee on
administration of justice**

Courts of Justice
Statute Law Amendment Act, 1993

Chair: Rosario Marchese
Clerk: Donna Bryce

Journal des débats (Hansard)

Mardi 17 mai 1994

**Comité permanent de
l'administration de la justice**

Loi de 1993 modifiant des lois en ce
qui concerne les tribunaux judiciaires

Président : Rosario Marchese
Greffière : Donna Bryce



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 17 May 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 17 mai 1994

The committee met at 1602 in room 228.

COURTS OF JUSTICE

STATUTE LAW AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT DES LOIS

EN CE QUI CONCERNE LES TRIBUNAUX JUDICIAIRES

Consideration of Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act / Projet de loi 136, Loi modifiant la Loi sur les tribunaux judiciaires et apportant des modifications corrélatives à la Loi sur l'accès à l'information et la protection de la vie privée et à la Loi sur les juges de paix.

CRIMINAL LAWYERS' ASSOCIATION

The Chair (Mr Rosario Marchese): I call the meeting to order. I'd like to welcome Mr William Trudell from the Criminal Lawyers' Association. Mr Trudell, you have half an hour for your presentation. We try to leave 15 minutes, in which time the caucus members have an opportunity to ask you questions. If you can do that, that would be great.

Mr William Trudell: Thank you, Mr Chairman. We welcome the opportunity to appear before the committee. We were consulted and had some input into the drafting of this legislation and therefore we're very pleased to be asked to come back. It's a personal pleasure. I am one of the vice-presidents of the Criminal Lawyers' Association, which represents over 1,000 members now in the province of Ontario, throughout all the regions.

I won't need half an hour. There are a couple of sections of the bill to which I would like to bring the committee's attention that cause some concern to us. I'd just like to go to them. I may get myself into some difficulty, but I want to speak directly to concerns we have.

Section 43 of the proposed bill talks about how judges become appointed. This is one of the most important aspects of this bill, especially in this province, perhaps even in this country, when there are increased changes in legislation, increased pressures from various representatives of various groups and a tremendous case load in the provincial court, where most of the work is done, really. I'm speaking on behalf of the Criminal Lawyers' Association and I'm not speaking in relation to representation before the Family Court, save and except where it involves young offenders.

We feel, with respect, that clause 43(2)(c)—“seven persons who are neither judges nor lawyers, appointed by the Attorney General”—is fraught with some danger,

maybe concern. What's the matter with lawyers or judges appointed by the Attorney General? We recognize and respect the need to have judges represent demographic makeup throughout this province. We realize that judges have to represent all interest groups. They are human beings, and they don't check that when they become judges. But it's very important, in my respectful submission, that we don't eliminate people who are skilled and people who have been trained in the profession.

For instance, I respectfully recommend that this section is imbalanced, but if it were to be seven persons appointed by the Attorney General—why doesn't it just say “seven persons appointed by the Attorney General”? That way, if Madam Justice Bertha Wilson wanted to be appointed to this committee, she'd be eligible, or someone like Ken Dryden, who happens to be a lawyer. The list can go on. People who are lawyers or former judges are excluded from the Attorney General's appointment in that section. We think that tips the balance, unnecessarily, away from making sure that the people who come into the system as judges have both the skills training and represent the broad spectrum this legislation is attempting to promote.

I think the Attorney General's hands are tied by that subsection, and we'd like to see them untied. We're very concerned with ensuring, in these pressure times in the criminal courts, that the judges who are appointed are skilled. We are concerned about what may be implicit in 43(2)(c), which ties the Attorney General's hands.

The next section I would like to refer you to is section 51.5, talking about complaints. Subsection 51.5(3) says, “Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances.” According to this section, these types of situations can't go to mediation:

“1. There is a significant power imbalance between the complainant and the judge—to just stop there, it might be asked, isn't there always a perceived power imbalance, whether it be a male judge or female judge?—or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.”

As I read this section, even if the complainant agrees to mediation, it may very well be that they can't have mediation if they fall under paragraph 1. What is a significant power imbalance between the complainant and the judge? The fact that someone's a judge and someone else isn't? Is that what this means? I don't think that's

what mediation is really all about. Respectfully, I think mediation is bringing two parties together, with someone who is powerful in the middle to say there has to be some give and take if the parties agree.

Paragraph 2: It's really quite sad that we have to say it's where "The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the Human Rights Code." In other words, it's where there has been an allegation of sexual harassment against a judge, even if the parties agree that it be—and I use the word carefully—of a minor nature, some comment made. Isn't this what we want to mediate? Isn't this how we can put the two parties together, and the parties agree that in this particular case the judge doesn't need to be on the CBC evening news, nor does the complainant need to be on the CBC evening news because he or she—and I include female judges in that category—has made an inappropriate comment or there's an allegation of sexual misconduct.

1610

If mediation can work, if the parties agree, I think what we do here is allow our system to work a little smoother, as opposed to being held up to public scrutiny that is unrestrained. I think we spend more time trying to explain to the public, after the commissions that may have got off the rails—without mentioning any—that the system is working and everybody's in there and not making sexual remarks to each other. The criminal courts are busy, and mediation is exactly, in the appropriate circumstances, what we would like to see here in these changing times, where men have to become more sensitive, women have to become more sensitive, and we all have to become more understanding. Mediation may be the way to go.

Third, where "The public interest requires a hearing of the complaint." I am not sure, but perhaps the committee is, who makes that decision and what the public interest is. We have now had a major hearing in this province, and the public interest was served by letting the public know that these things are not happening behind closed doors and that people are open to scrutiny. But where does the public interest require a hearing of a complaint if the complainant says and the judge says, "We'd like to go to mediation and resolve it"? I am worried, with respect, about pressure groups taking over this process.

That's the second section we would like to bring to your attention.

The third one is subsection 44(4). We were very supportive of judges being able to work part-time; for instance, judges who wanted to take maternity leave or whatever. But 44(4) says, "A judge who is serving on a part-time basis under subsection (1) or (2) shall not engage in any other remunerative occupation."

What does that mean? Does that mean a judge can serve in a political organization, if it's not prohibited under some other statute? Does that mean a judge can work at a rape crisis centre? Does that mean judges can volunteer their time to the food bank? What does that mean in terms of the judge's responsibility? What has

happened here in this province, or what seems to be the case, is that a judge is a judge is a judge.

The Criminal Lawyers' Association took the position that we wanted to be very careful about a judge's conduct on the bench versus a judge's conduct off the bench. If you have judges working part-time and they can do anything, except if they're getting paid for it, I am concerned about a gap in terms of what judges may be able to do in the community or what they may feel comfortable doing in the community.

Section 51.6 is another section we would really like you to consider having a peek at, subsection 51.6(10). This legislation attempts to strike a balance between keeping the process of judges being accountable open and making sure that judges are not destroyed by publicity in what may turn out to be a frivolous complaint, or indeed that individuals are not destroyed by publicity in what may be a complaint that's resolved by being found to be frivolous or by someone withdrawing it or whatever.

What does "in exceptional circumstances" in subsection 51.6(10) mean? "In exceptional circumstances and in accordance with the criteria established under subsection 51.1(1)"—and those criteria have to be established—"the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint."

In our respectful submission, as criminal lawyers, we'd like to see that in all the cases. That's not going to happen in this world, I suppose. But what does "in exceptional circumstances" mean in terms of protecting the public's right to know but, quite frankly, from my point of view on behalf of the Criminal Lawyers' Association, protecting that judge who is the object of an accusation, the object of a hearing before the Judicial Council? If we knew what the exceptional circumstances were—and I don't think we could legislate every exceptional circumstance, but I'm having some difficulty with those words because I don't know what guidance goes with them.

Section 51.8 is the last one:

"A provincial judge may be removed from office only if,

"(a) a complaint about the judge has made to the Judicial Council; and

"(b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,

"(i) inability, because of disability, to perform the essential duties of his or her office" etc.

What does that mean? Does that mean a judge who is physically disabled, because there's no ramp in northern Ontario, can't sit? I don't know what that means. What does "incapacity" or "disability" mean in that section? If it means judges are incompetent and shouldn't be sitting, that's obvious. That's not clear enough, with respect, to protect judges who may suffer from disabilities that we may be able to resolve by way of spending some money.

“(ii) conduct that is incompatible with the due execution of his or her office.” What does that mean, “incompatible with the due execution of his or her office”? Does that apply to in court? Does that apply to in the hall? Does that apply to the cocktail party? Does that apply to the judge who is working only part-time and on a six-month leave of absence?

“(iii) failure to perform the duties of his or her office.” What does that mean? Doesn’t show up? Doesn’t show up on time? How many times? What does “failure to perform” mean? Obviously, if a judge is assigned and you can’t find them, and you know they’re not here at Queen’s Park giving submissions to a committee, I suppose.

There are just some areas that we think can be spelled out a little better, but we really quite feel that the bill attempts to strike a balance, and those are the sections we would urge you to look at.

Mr Robert Chiarelli (Ottawa West): Thank you very much for your comments. I would make a suggestion which will create a bit more work for you on this particular issue, but as you’re aware, we will be doing clause-by-clause deliberation on this bill in the near future, in which case we’re going through section by section. It would make it very much easier for us to try to translate your thoughts into action if you could provide us with suggested amendments, if you haven’t already drafted them. Some of your comments were more by way of questions and raising issues, and in some instances, you had some very specific recommendations. Where you can be specific, I would certainly appreciate receiving copies, as I’m sure the rest of the committee members would too, on specific section-by-section amendments you would like to see. There probably would be a better likelihood of some of those changes being effected if you could provide us with concrete suggested amendments.

Mr Trudell: Done. The last thing I said to the executive secretary, Stephanie Mealing, as I left the office is that we’re going to have to put something in writing and get it to them before the 30th.

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Mr Chiarelli: The other thing I want to raise has to do with your first comment on section 43 with respect to the composition of the appointments committee. You indicated that it was fraught with danger, in the sense that seven persons who are neither judges nor lawyers would be appointed by the AG.

To read very briefly from the compendium which was put together by the minister and the ministry, it says:

“The Ontario committee is the first to have a non-lawyer majority in Canada. In the United States, most committees have a majority of non-lawyers. Non-lawyers bring new insights which those closely connected to the justice system may not have. For this reason, the bill provides for a majority of public members on the committee.”

It would appear to me that there’s really a philosophical difference between what you’re saying and what the government has put into the legislation. I’d like you to address that philosophical difference. I’m sure what was

in the government’s mind was the perception, at least on the part of the public, that the justice system is very much a closed shop, and the government’s probably trying to open it up somewhat. Perhaps you can expand a little more on what you consider the dangers to be, when you say it’s fraught with danger to have seven public members who are not lawyers or judges.

Mr Trudell: Maybe the word “danger” was injudicious, but with respect, I think the government can strike the balance that it’s attempting here by not tying the Attorney General’s hands to have persons who represent the demographic makeup of the province, which this section is referring to, as far as I understand it. They may be lawyers. What’s the matter with lawyers? We’re not all criminal lawyers, and we’re not all that bad. Some of us can help.

Mr Chiarelli: Probably a lawyer and a politician.

Mr Trudell: Right. There is a perception here that we as lawyers and, with great respect, you as politicians allow the public to have, that there’s something the matter with lawyers. Lawyers probably are the ones who drafted this bill. I think there has to be some education out there that the criminal justice system and the family court system are not a closed shop. Every day, people are there solving the problems of the community, and they’re real people in there. They’re real people coming in with their problems and they’re real people dealing with them as judges and defence counsel and crown attorneys and representatives of various parties.

The public feeling that it’s a closed shop is a problem in education. With respect, I think this is an overreaction. The government should spend some money saying that it isn’t a closed shop. We spend a lot of time in criminal justice, but we don’t spend very much time trying to educate the public about what goes on in there, until some MP’s son gets charged or some criminal lawyer’s daughter gets charged or our neighbour’s, and then we understand it. The government is reacting improperly to this, with respect, by acceding to the criticism that we operate in a closed shop. I think everybody in this room knows we don’t.

Mr Charles Harnick (Willowdale): The Judicial Appointments Advisory Committee has provided us with a brief, and in dealing with clause 43(2)(c), they say the section should be modified so as not to exclude a person who has studied law but is not a practising lawyer. I gather that your submission goes further than that.

Mr Trudell: Let’s use the example, if you don’t mind, of Madam Justice Bertha Wilson; let’s just decide that next year she has nothing to do. The Attorney General cannot appoint her. It makes no sense, in my respectful submission. Whether or not I agree with Madam Justice Bertha Wilson’s views—we used to work together at Osler, Hoskin 20 years ago—why should she be excluded from this? Or why should a disabled person be excluded from this? Or why should a black person who happens to be a practising lawyer or a retired lawyer be excluded from this?

If you studied law but aren’t practising, is the sin that you get called to the bar? It adds to this feeling that it’s a we-they situation, and that’s not what it is.

I'm not saying that there shouldn't be public representation of people who aren't lawyers. There's no question about it, because sometimes lawyers can't see the forest for the trees. That's why at the law society, for example, if you go before a panel to be disciplined, you're going to have a lay member there. But on behalf of the Criminal Lawyers' Association, we don't think it's something to be proud of, that this is the first committee in North America or whatever where the balance is not more lawyers than public. I'm not saying that very well.

Mr Harnick: I understand.

Mr Trudell: I don't think that's right. Lawyers are supposed to be problem-solvers, and that's what we do.

The system is changing dramatically in this province. The Martin committee report has just come out, they're talking in Ottawa about the preliminary hearing, we're talking about disclosure—things are changing on a daily basis. With respect, if you have a majority of non-lawyers, who don't really understand how the system works, I'm concerned about who eventually sits. There should be a balance here, and I think the balance should be shifted in favour of people in the profession.

Mr David Tilson (Dufferin-Peel): The other issue, and this issue has been raised in the House several times, is the fear of political interference; that whatever political persuasion one is and for whatever reason, there would be some political appointments, particularly in the non-legal profession. Do you have any concerns about that issue?

Mr Trudell: I don't think any of us here came down in the last rain. When there are political movements going on and there are sensitive issues—for instance, we are now trying to hold the flood banks back on the Young Offenders Act because everybody thinks it's terrible. There could be movements in terms of appointments here that reflect political pressures, not so much political parties or memberships, but pressures that are, you knew, as long-lasting as the good weather was on Saturday. That's what we're concerned about.

Two years ago we had a problem in this province with backlog in the provincial court. There's a simple solution to impaired driving situations, for instance: Give restricted licences, and you would find immediately in the criminal justice system all kinds of cases that got resolved. But if right across the board people lose their licences, whether they drive taxis or politicians or whatever, it doesn't make any sense.

What we're concerned about is appointments that reflect powerful special-interest groups at certain times.

Mr Tilson: The other issue—and I'm sorry I didn't hear the first part of your presentation—has to do with the transfer of provincial judges to section 96 judges. The saving to the provincial government might be substantial, depending on what happens. There's the issue of services provided, particularly in family law, and whether moneys are going to be available. I appreciate that you're from the Criminal Lawyers' Association and that it may not apply to you, but it's the issue of moneys that are available going into the consolidated revenue fund as opposed to the AG.

1630

Mr Trudell: Let me say this. I practise exclusively criminal law, but a representative from our association in Sault Ste Marie doesn't just practise criminal law; he practises family and other things. I'm not going to answer this question articulately because I don't have all the answers in terms of section 96 and the transfer, but one of the saddest things in this province is the underfunding of criminal justice.

Let me give you a quick example before you throw me out. I remember calling the courthouse in Collingwood a number of years ago to talk to the crown, and a judge answered the phone. I said, "What are you doing answering the phone?" He said: "What do you mean? I do everything around here." Then I called back 45 minutes later, and I said, "Are you still answering the phone?" The crown hadn't arrived.

Mr Tilson: You don't need to say any more. Thank you.

Mr David Winninger (London South): Thank you for your presentation, and we're looking forward to having a written version as well. You've certainly raised some very interesting points around the language of certain sections of the act. I would point out that some of the issues you raise will remain within the purview of the Judicial Council; they of course will be setting their procedures in connection with the work they will continue to do. But it's certainly helpful to have your views. Thank you for coming.

Mr Trudell: I appreciate it very much. Thank you.

JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

The Chair: Judge Robert Walmsley.

Judge Robert Walmsley: Good afternoon. I have with me some support troops, and I'll ask them to advance to the ramparts. First of all, I want to say how pleased we are to be here this afternoon, Mr Chair, seeing you and the members of the committee and having this opportunity. We have a brief brief, which I'm not going to refer to in any detail. I'm sure you'll be reading it at some stage.

I would like to introduce the people who are here: Nancy Hansen, from Ottawa, a member of our appointments committee; David McCord, also from Ottawa, as it happens, another member; and Professor Peter Russell. Peter Russell was the one who lent his name to the Russell committee, which was the common nomenclature for the appointments committee when it started back in 1988. We're very glad he's able to join us even though he's no longer able to be on the committee.

The order of procedure is this: On page 2 of the brief we have two major points from the committee, and there will be one point from Professor Russell. We have negotiated with the ministry over many months and we have been able to solve a lot of the wording difficulties we had, but we still have two points remaining.

The first one is 4(a), set out in "Specific Requests for Revisions." I'm going to ask Nancy Hansen, and then after that David McCord, to elaborate on why we're making this recommendation. After that, I understand that Professor Russell would like to speak to you on an old

favourite section, clause 43(2)(c), in other words, the seven members appointed by the Attorney General.

Finally, I have a modest comment to make on the definition of who is a lawyer. Without further ado, I call on Nancy. Would you start off, please?

Ms Nancy Hansen: Thanks very much for having me here today. I'm one of those individuals who teaches law and isn't a lawyer.

First of all, I'd like to speak on the fact that because of the importance of this committee—it's been held up for reflection on both the federal level and various provincial levels across the country—it's important that this committee remain as far from the political process as possible. Our autonomy is what gives us viability in the public's eye, and public perception, as far as this committee is concerned, is paramount. Given the importance of the judiciary, given the impact of the judiciary on this province, we have to be as far from the political process as possible, irrespective of policies dealing with other committees. Our situation is unique.

Boy, I'm speaking faster than I thought I would.

As I said, the importance of public perception is paramount. If we are to ensure that the judiciary is as free from politics as it can possibly be, our position has to remain unique, irrespective of the process in other committees this government has. That's all I have to say.

Rev David McCord: Our point has to do very specifically with 43(4), the appointment of the chair. We made a decision to accept the invitation of the committee because we were unanimous and felt very strongly that the wording we had recommended, that there be a preceding consultation with the members of the committee before a chair was named, is extremely important for the functioning well of this kind of committee.

We've heard about public perception, and I would just like to share something. I'm one of the representatives from the community who happens to know something about the criminal justice system and not legally trained. But there is a very strong perception that the patronage system of the past is like the hydra. It keeps coming up in different forms. There is a fear in the community that the new system will inevitably succumb to the kinds of pressures that are inevitably there. We all know we don't live in a perfect world but that the world of political rewards, the world of personal ambition, the world of payoffs and of getting kicked upstairs, I can assure you, is alive and well, and it's something that we, as members of this committee, have been struggling with.

So there's a professional cynicism. I spoke to many of the lawyers in discreet inquiries, and I was amazed at the number of lawyers—and we've just heard from a criminal lawyer. I was amazed to hear from criminal lawyers and other lawyers that their biggest fear was that this would simply become another mask for the same old thing. I had discussions with students in their final year at the University of Ottawa on two occasions. Interestingly, of all the things they could have discussed, that was the question that was raised. I do think there's some substance to that public perception and that fear, both within the profession and without.

My point is that we are still at a fragile, experimental stage. We haven't got a long history and we're still sort of forging along with a committee where you have seven people who do not come from that professional tradition mixed with people from the community. Here's the key point in the appointing of the chair: There has to be consultation with the members of that committee to choose the person who can handle the kinds of conflicts that committee inevitably has. We've only been in existence since December 1988, and it takes a certain kind of leadership, a certain quality of trust on the part of both the legal representatives and the community to enable that committee to function without having divisions along very undesirable lines.

Our plea is unanimous. Even if it means breaking precedents in terms of how you have set up other committees, I think Nancy's point was very well taken, that there's something very unique about the dynamics of this committee that you have to consider. Up to now, we have had three attorneys general with whom the committee has had—how can I put it?—an open-door policy.

We're preparing legislation for the future, and who's to say that is going to continue beyond now? That's why our plea is that at least there be some consultation so that there will be some accountability, moving back and forth, as to how we can best choose the fairminded consensus builder, without which I don't believe that committee is going to function very well, or else it will move into a much more politically divisive kind of committee than it has been.

1640

As we're looking to the future, I hope we can avoid the seeds, as was said yesterday, of much mischief being introduced into what I think is a very exciting experiment. As a matter of fact, I think it's a very important historic event that is being looked at. It's going to make legal history in Ontario certainly, and in Canada, but it's also being looked at from well beyond the Canadian borders. Professor Russell and I have had opportunity to meet the leadership from South Africa, an emerging democracy, wanting to see what it was that we had in place here in Ontario.

I think the time is opportune to look at the rewording of that which will keep the perception that this is a system that is as far as possible away from the perception and the reality of political manipulation.

Mr Peter Russell: I would like to congratulate the members of the Legislative Assembly and the government for getting this project to the legislative stage. In doing that, I'd like to pay tribute to the person who really is the author of this general reform of our judicial system in Ontario. He's ill today and hospitalized. That's the former Attorney General, Mr Ian Scott. I left word at the hospital that this was on today and that I would say on his behalf how indebted I am, as a citizen of Ontario, and my fellow citizens are to his initiative. It's been an initiative that, in my sense of things, has been received well by all the parties in the Legislature.

I remember, when Mr Scott introduced this pilot project and introduced me to the Legislative Assembly in December 1988, the members of the opposition party

rising and approving the general idea, and I thought that was the right way to go. This system must have support from all sides of the Legislature, all parties in the province. After Mr Scott left the scene, I felt this system had the full support and cooperation of his two successors from another party who were, it seemed to me, equally committed to it.

It's somewhat in that spirit that I speak to a small modification you might consider to clause 43(2)(c), where it says the committee is to be composed of "seven persons who are neither judges nor lawyers, appointed by the Attorney General." Our committee, the Judicial Appointments Advisory Committee, recommended in its own recommendations in its final report, recommendation 5, that the words "in consultation with opposition leaders" be added after the words "Attorney General;" that is, "by the Attorney General in consultation with opposition leaders."

The thought there reflects very much what I have just said, that the composition of the committee, particularly when it's at the discretion of the Attorney General, should be not seen to be and not perceived to be partisan and strictly a matter of people who support the government party. My experience with the three previous attorneys general is that they were quite balanced and fair and not partisan in selecting people, but you today are preparing legislation for decades to come. We can't always be sure that attorneys general in the future will have the kind of judgement and fairness that Ms Boyd, Mr Hampton and Mr Scott have exhibited in discharging their responsibilities in appointing people to this committee. You have to legislate in a longer time frame.

I think this is a very soft modification. "Consultation" doesn't mean the opposition leaders would veto or nominate, but it does put a constraint on an Attorney General who, unlike the ones who have exercised responsibilities up to now, might load the committee with people who were obviously partisan and really reduce the credibility of the committee to perform its function.

It seems to me that the one argument against what is being suggested here, and it's something that's been put to me by my academic colleagues, is that if you consult the opposition leaders, they will feel obliged to put in representatives of their party, so that the committee becomes structured in a very partisan way—that the government appoints, I don't know, three of its supporters and the opposition a couple each of its—so the people come to the committee feeling they're representing a particular political party. I don't think that's a realistic fear.

I think the larger fear is that in the future some less principled Attorney General than we've enjoyed to date would not be inhibited from packing the committee, if you like, with members of the party. I'm particularly worried about that if we return to a period of politics, which we've departed from, of what we call one-party domination. We haven't had that in Ontario, I don't have to remind you members of this Legislature, for some time. But we did have for a very long period one-party domination of the Legislature in Ontario, and that could lead to an overloading in one partisan direction.

I urge you to consider the Judicial Appointments Advisory Committee recommendation 5 and add the words "in consultation with opposition leaders" to clause 43(2)(c).

Judge Walmsley: The point I wish to make, which is referred to on page 2 of the brief, is a rather minor point, but I think it should be looked at. It's the wording which occurs twice in the legislation, both in clause 43(2)(c) and paragraph 43(6)3, and that's the word "lawyer."

I appreciate that it may not be the wish of this committee or of this Legislature to have too many representatives of the establishment legal community on this committee, but by the same token, there are many people who are knowledgeable in matters of law who are not lawyers who could be considered to be eligible for this committee. I think of somebody such as a law professor who has studied in the area of judicial administration, somebody of that nature. As a matter of fact, Nancy Hansen, sitting beside me, has finished a number of studies in law, and it's possible that she might be considered to be so closely connected with the law that she wouldn't be eligible under the rubric "neither judges nor lawyers." By the same token, neither is she eligible under the legal appointment section, which provides for appointees by the Canadian bar, the law society and the County and District Law Presidents' Association.

We're suggesting some such wording as including the words "who are neither judges nor *practising* lawyers," to give a little more scope to getting that type of person on the committee, or at least not excluding them. I think this clause, in its present form, could possibly exclude a category of people with interest in the law who might be excluded under both clause (c) and I think (b).

As to specific wording, I don't know whether you need anything further from us on that issue.

With respect to designation of a chair, the simple wording "after consultation with the committee" would suffice. Peter, you suggested your own wording: "consultation with the opposition leaders."

Mr Russell: I was just taking it from our committee's previous recommendations. It could be "after consultation." I said "in," but "after consultation with the opposition."

1650

Judge Walmsley: It's our view that "consultation" does not imply domination. It's simply another way of showing that all constituencies are more or less independent of government. If you look at the composition of the committee, you will see that there are three law organizations, there is the Judicial Council, there are the judges represented, and then the community coming in with the majority. If those seven members are arrived at by discussing with other members of the Legislature, then again we have a much broader constituency with an interest in seeing that this committee is properly constituted.

I don't think we have anything further to add, but we certainly would be very glad to answer questions.

Mr Harnick: Your Honour, you heard the presentation made by Mr Trudell, who disagreed with the idea

that there had to be seven persons neither judges nor lawyers. He felt this was very constraining wording as far as the Attorney General was concerned. What he suggested was "seven persons appointed by the Attorney General," so that the Attorney General could choose lawyers, retired judges—he gave certain examples. I wonder if I can get your comment about the position he was taking.

Judge Walmsley: We haven't had any difficulty in the practical operation of the committee by having a majority of non-legally trained persons. Our feeling is that that's the heart of the committee and that's the heart of this recommendation, that it is separated out from the profession. Not only do we have to maintain a distance from the executive of the Legislature—I suppose I should say more specifically "the executive"—but we also have to maintain a distance from the profession so that it doesn't appear to be self-perpetuating in the appointment of its members to the bench. I don't have as much difficulty as Mr Trudell had about leaving that in the hands of the Attorney General.

We have operated from the outset, since 1988, except for one brief period, with a majority of laypeople. It's not the mix of legal and lay that is the problem, it's getting the right persons from both groups on the committee, persons who are prepared to accommodate, to reach consensus. That's the heart of our committee work. We practically never make a decision unless there's a consensus or unanimity.

Mr Harnick: Professor Russell, maybe you can help me. How many members has the committee traditionally had since 1988, and what has been the balance of laypeople and legally trained people?

Mr Russell: I'm not going to be able to recall the exact numbers.

Mr Harnick: Roughly.

Mr Russell: People would have to leave the committee for health or other business or work reasons, and sometimes there were vacancies. We started definitely with a lay majority. David and Bob were old originals, so I'm referring to them. I think it was six and five? Yes, it was. In any event, it's in our first preliminary report, which is tabled in this House. Then we expanded the committee and maintained the lay majority. But then some of the unscheduled departures from the committee would be laypeople, so for a period we were probably at least in balance, and maybe for a month or two it could be that there was actually a legal majority. I'm not sure of that. But there was never an intention to deviate from the lay majority. If it occurred at all, it was the accident of vacancies and a delay in filling.

I'd just like to bring one factor into your deliberations which I think has a bearing on this; that is, that the process of consultation the committee goes through in assessing candidates involves contacts with many lawyers and many judges. In other words, in assessing the professional reputation and competence of candidates, it isn't only the lawyers on the committee whom we rely on to know about them, because in this huge province your legal members aren't going to know about 99% of the candidates. It's contacting; you make a lot of contacts.

The laypeople participate in that, as consulting the bar and bench.

It's terribly important to get a broad reading of these candidates' ability from those in the profession, bar and bench, who are acquainted with them. That's where I think the point of making sure you're getting knowledgeable lawyers' advice is crucial. But it doesn't depend on there being a law majority on the committee.

Mr Harnick: I appreciate that, because it helps reconcile the differences between your brief and Mr Trudell's brief. That's very helpful to us.

Ms Christel Haeck (St Catharines-Brock): In the current makeup of the lay members, do the majority of them have some understanding of the law? They're not like me, who happens to be a librarian and only cursorily, occasionally, goes through the Criminal Code or some other legal document?

Ms Nancy Hansen: May I speak to that? I have extensive legal knowledge. There is no LLB anywhere near my name. I have a degree in criminology, a degree in legal studies, and an MA in law and social policy in Canadian studies. Each of us who is a member of the advisory council from the community brings specific knowledge of certain areas that have legal bearing. We don't represent any particular constituency as members of the committee, but we do bring life experience, we do bring a very great deal of legal knowledge with us, although we are not lawyers per se. So we do have legal knowledge and understanding.

Judge Walmsley: Did the members receive a copy of the list of the committee members in their briefs?

Ms Haeck: We may have. I just haven't managed to finger it in the last few minutes.

Judge Walmsley: That does illustrate the diverse backgrounds of the committee members. One is a race relations officer at Western University, another is a first nations representative whose work takes her into contact with the courts, and on it goes.

Ms Haeck: In other boards I've sat on myself, not all the members end up being replaced at the same time. There's usually a staggering of appointments. So to some degree, the concern you've raised about the fabric of the committee being changed by, say, one AG putting all patronage appointments in there and shifting the majority in one particular way probably wouldn't happen that quickly. At least that would be my reading of that, but what's your response to that?

Judge Walmsley: I think the provisions of section 43 providing for staggered appointments go a long way to answering that. I think the detail of that will ensure that there's always a continuity of older members as new members come aboard. We haven't had too much concern about that prospect, though interestingly enough we are in the position of trying to decide what we should be doing in this transitional period: Do members want to continue? How do we negotiate that with government? This is going to start from square one, and we're hoping we will be able to negotiate with the law people and the judges and so on so that there's change but there's also stability.

1700

Rev Mr McCord: Could I answer the first question, at least provide a partial answer? There are many people who may know the law, but there are many citizens who know the effects of the law. That, I think, is a key point that needs to be made. There are many of us who have experience in the criminal justice system. It's a vast system, and it's not only what's happening on the bench that needs to count. We need people who are going to come to the bench who are conscious of the power that the community is giving them. That's a critical point.

Ms Haeck: Coming from St Catharines, there are a lot of people who would agree with your comment.

I have a point to Mr Winninger. The panel here has suggested that people who are non-lawyers but who may have some legal training should be considered. In looking at Bill 136 and the preamble, I don't see a definition of "lawyer." Frequently they have a sort of glossary in the preamble to define terms, but I don't see this here. What is the definition of "lawyer" under any of these other acts listed here? That may answer the concern of the panel.

Mr Winninger: Presumably, to be a lawyer in Ontario, you need to be called to the bar of the Law Society of Upper Canada. That's what distinguishes you from a layperson. In the wording of clause 43(2)(c), I don't see any disqualification based on legal training, simply that the appointee not be a judge nor a lawyer.

I thank the committee for attending today. I asked specifically that you be contacted to present. Collectively, you're vested with the very significant responsibility of appointing our provincial judiciary, and your views are very important.

I have one quick question of clarification for Judge Walmsley. You mentioned that you felt that non-practising lawyers should be qualified under section 43 to serve as the lay appointments, if you will. I'm just wondering if you could refine a little your view of what a non-practising lawyer is. We have, as has been observed earlier, some non-practising lawyers around the table here who now practise politics. If, for example, a lawyer still has an interest in a law firm of a financial nature, would that disqualify him or her?

Judge Walmsley: Perhaps I could help by referring back to our original submission to the ministry. We originally proposed this wording, "seven persons who are neither judges nor members of the bar of one of the provinces or territories of Canada, recommended by the Attorney General for appointment by an all-party parliamentary committee." That was our original formulation, and that of course took into account my particular objection and also that of Professor Russell. I would think that would be workable. In other words, if you're a member of the bar, that's the law society, and presumably if you're going to pay money to belong to the bar, you're going to want to work for it. You couldn't then come in under the Attorney General's group.

Mr Winninger: In the case of a retired lawyer who's no longer practising law in the conventional sense, who is no longer a member of the bar because he or she doesn't pay the annual fees for that privilege, but still

may have some financial interest in a law firm, would that, in your view, disqualify such a person?

Judge Walmsley: I'd have to think about whether that ties him or her too closely to the practising profession. But if they weren't having a financial connection, there's no reason why he or she couldn't be appointed.

Mr Chiarelli: First of all, I think the best endorsement for continuing and improving the mandate of the committee is the very nature of your submission here today. It really speaks well for the committee and the process, and I certainly appreciate that.

I have a couple of very brief points. Professor Russell indicated that the word "consult" is a very soft word. I tend to agree with him. In looking at your recommendation vis-à-vis appointment of a chair, I wonder if there's something that could be a little stronger than just the consultation, for example a criterion of having served on the committee for one or two years, something that would be a little stronger than consultation, because we know what consultation can become. We've seen, from time to time, that it can mean absolutely nothing. I would like somebody to comment about whether or not you have any suggestions which, if they were acceptable, might be a bit stronger.

Rev Mr McCord: If I may, it seems to me that to put in that the person has been there for *x* number of years is not really to meet the need that we have felt as members of the committee. There are all kinds of dynamics that go around that table, and it's not along the lines, necessarily, of the lawyers and the non-lawyers. That's a very important point also for you to reflect on. It's the need to capture the trust of the members around that committee. We get to know each other pretty well, although we don't socialize, unfortunately, nearly as much as I would have liked to build that confidence and mutual respect around the table. I think that's the key issue and I think the Attorney General needs to be aware of something of the recent history.

There are interesting dynamics that take place when you have very strong-willed people, very strong-minded and very capable people around the table. I would think it would be a major blunder to have a person appointed as chair who did not carry the respect and the confidence of the other members of the committee. There's a dynamic there. I wish were simpler, but it's to get at that more intangible element.

Mr Chiarelli: When you talk in terms of a non-practising lawyer being included in the seven public members, would you also include in that a retired judge as being eligible, a judge who has no responsibility?

Judge Walmsley: I was going to say something rude, that once they get to the age of retirement they're probably over the hill. But I'm at the age of retirement, so I withdraw the remark.

To be quite frank with you, sir, we haven't thought of that particular issue. It might well be that somebody with many years of service and with much knowledge of the law and of the dynamics might be very useful. I certainly wouldn't exclude it.

Rev Mr McCord: There is one other thing I feel very

strongly about, as a member of the community and representing those of us who have served from the community on this committee. It's fascinating to me to listen to the line of questioning, which tends to assume that the people who can best serve the people of Ontario are those who have had legal training, whether they be retired or not. I think it would do a great disservice to the people of Ontario to have as the other seven all people who have some connection to the law but who don't have other connections back to the community.

Judge Walmsley: You see, the dynamics of the committee are showing right here. As chair, no doubt we'll reach a consensus before the end of the day.

The Chair: We found your interventions very useful and we thank you all for coming today.

Judge Walmsley: It's been our pleasure.

The Chair: This committee is adjourned until Monday, May 30.

The committee adjourned at 1710.

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**In attendance / présents*

Also taking part / Autres participants et participantes:

Winninger, David, parliamentary assistant to Attorney General

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service



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Troisième session, 35^e législature

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Monday 30 May 1994

Journal des débats (Hansard)

Lundi 30 mai 1994

Standing committee on administration of justice

Subcommittee report

Courts of Justice
Statute Law
Amendment Act, 1993

Chair: Rosario Marchese
Clerk: Donna Bryce

Comité permanent de l'administration de la justice

Rapport de sous-comité

Loi de 1993 modifiant des lois
en ce qui concerne
les tribunaux judiciaires

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 30 May 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 30 mai 1994

The committee met at 1607 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Rosario Marchese): Before we begin with our deputants, I'd like to read a subcommittee report into the record.

"Your subcommittee met on May 19, 1994, and recommends that:

"1. Pursuant to standing order 108, the committee proceed with the matters of the control of ammunition and community-based crime prevention initiatives as detailed in the motion approved by the committee on Monday 16 May 1994; and commencing on June 6, 1994, that three days be allocated for public hearings and three days for preparation of an 'action-oriented' report.

"2. The committee will request the House leaders (by order of the House) to allow the committee to meet on Wednesday, June 8, 1994, following routine proceedings for the purpose of public hearings.

"3. Individuals/groups will be invited to appear to provide evidence based on each caucus submitting a list of names to the clerk. Among the 12 individuals/groups to be invited will be two professors or lawyers specializing in constitutional law, to be invited by the clerk. The time slots for all witnesses will be for 30 minutes.

"4. If one of the individuals/groups from a caucus's list is unable to attend, the caucus will provide a replacement.

"5. That the constitutional lawyers/professors who are requested to provide expert testimony be compensated in accordance with a policy established by the Speaker of the House as follows: A reasonable sum may be allowed for a witness who appears and gives expert testimony up to an amount of \$350 for each day of giving evidence, and each additional day authorized by the committee.

"6. The ministers of Consumer and Commercial Affairs, Solicitor General, Attorney General will be invited to attend and participate in the report-writing stage of the committee's considerations.

"7. Should any other individuals/groups wish to be scheduled, they be put on a waiting list pending a cancellation; and they be invited to submit written briefs to the committee by June 6, 1994.

"8. The research officer will prepare a summary of recommendations by June 10, 1994, for immediate distribution to committee members."

That's the report. Any questions or discussion?

Mr David Winninger (London South): Originally our schedule in connection with Bill 136 called for clause-by-clause on May 31 and again on June 6. Has

that now changed so that we complete clause-by-clause tomorrow?

The Chair: I'm certainly hoping that's what will happen. Based on the discussion we had with other committee members, it was assumed, or at least I interpreted it to mean, that we shouldn't require more than one day of clause-by-clause.

Any other questions or statements? Seeing none, can I have a motion to approve this report?

Ms Sharon Murdock (Sudbury): I so move.

The Chair: All in favour? That carries.

COURTS OF JUSTICE STATUTE LAW
AMENDMENT ACT, 1993LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES TRIBUNAUX JUDICIAIRES

Consideration of Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act / Projet de loi 136, Loi modifiant la Loi sur les tribunaux judiciaires et apportant des modifications corrélatives à la Loi sur l'accès à l'information et la protection de la vie privée et à la Loi sur les juges de paix.

JUSTICES OF THE PEACE ASSOCIATION
OF METROPOLITAN TORONTO

The Chair: I invite the Justices of the Peace Association of Metropolitan Toronto, Mr Frank Devine and Mr Patrick Deacon. Welcome to the committee. You have half an hour for your presentation and questions.

Mr Frank Devine: Mr Chair and members of the committee, there are two associations representing justices of the peace in the province of Ontario: the Ontario-Wide Justice of the Peace Association, and the Justices of the Peace Association of Metropolitan Toronto. This submission has been prepared for your consideration by the Toronto association and we are representatives of that association.

We are here of course to speak to Bill 136, and with the time provided, we will have to limit our comments to the amendments or, perhaps more appropriately, the lack of amendments to the Justices of the Peace Act.

We feel it is our duty to advise this committee of an injustice, an injustice we believe is the result of discriminatory practices employed by the Ministry of the Attorney General in dealing with justices of the peace over a number of years. This bill does nothing to address these discriminatory practices and in fact will aggravate the situation.

"Discrimination" is not a word we use lightly, but when discussing our situation, the textbook definitions, namely "to distinguish unfavourably" or "prejudicial action or treatment," accurately describe the circumstances. If we are being discriminated against, it should be a matter of grave concern to every member of this committee as well as every member of the Legislature.

The stated purpose of Bill 136 is to improve the justice system. It sets out new methods for dealings between the executive branch of government and the judicial branch of government. There are contained in the bill new complaints and discipline procedures and a method for determining remuneration, the purpose of which is to enhance the independence of the judiciary.

In discussing the framework agreement contained in the legislation, we find the quote: "Further, the agreement is intended to promote cooperation between the executive branch of the government and the judiciary and the efforts of both to develop a justice system which is both efficient and effective while ensuring the dispensation of independent and impartial justice."

There is, however, a glaring error in the proposed legislation in that it almost totally excludes an entire branch of the judiciary, namely the justices of the peace. One must ask the questions: Is there no need to develop an efficient and effective justice system when justices of the peace are involved, and, more important, is there no need to ensure the dispensation of independent and impartial justice when justices of the peace are involved?

Before one considers what are appropriate amendments to the Justices of the Peace Act, one must first address the status of justices of the peace. The question of whether justices of the peace are members of the judiciary or employees of the Ministry of the Attorney General has been a chronic problem and a matter of considerable anxiety to us.

The matter was ventilated to some extent in the decision of the Ontario Court of Appeal in *Currie v the Niagara Escarpment Commission*. That case is reported in *Canadian Criminal Cases*, and I refer you to document 1 in your folder. In that case, His Lordship, Mr Justice MacKinnon, stated:

"The use of section 11(d) of the charter to attack a whole branch of the judiciary, some of the members of which exercise judicial powers and some of whom do not, is a rather difficult concept."

We felt that this judgement of the Court of Appeal supported our belief that we were members of the judiciary, and we assumed that the Attorney General would take cognizance of that decision by introducing appropriate measures to ensure that our status and independence were properly secured.

The assumption proved to be unduly optimistic. In fact, the lack of any action on the part of the ministry led us to doubt that the Attorney General was interpreting the decision of the Court of Appeal in the same manner as the justices of the peace.

Letters were sent to clarify the situation. As you can see by the documents numbered 2, 3 and 4 in your booklet, the present Attorney General and her two

predecessors in office are very much aware that justices of the peace are members of the judiciary.

Although the highest court in the province and the chief law officer of the crown have clearly stated that we are members of the judiciary, we have learned that being members of the provincial judiciary is not the same as being perceived and treated as members of the provincial judiciary. Despite the clear indication of our status, the officials of the Ministry of the Attorney General continue to treat us as management employees, which in turn leads others to believe we are ministry employees. We offer just a few examples:

In the course of a seminar conducted in January 1990 for justices of the peace, a member of the Attorney General's legal staff addressed the topic of court reform. I asked bluntly if she was of the opinion that justices of the peace were members of the judiciary. She declined to offer an opinion on the subject and referred the question to the two provincial judges on the panel. One of the judges expressed the opinion that we were not members of the judiciary, and the other judge stated that without the opportunity to research the issue he would adopt his colleague's opinion.

I now refer you to document 5 in your folder. In a letter dated March 2, 1992, directed to me, the director of human resources for the Ministry of the Attorney General states that I am a management employee.

I refer you to document 6. In a memorandum to her staff regarding the visit of the assistant deputy Attorney General and the executive director, the court services manager of the Metro East court in Toronto describes meetings with the judiciary (criminal and family) and, at a later time, meetings with the justices of the peace.

The point we are making is that judges, directors, court service managers and even one of the ministry's lawyers sent out as a spokesperson to explain court reform are not aware of our status. If the problem were just a matter of pride or prestige, it would not be a major concern to us, but it is much more serious than that. It affects our everyday working conditions, our livelihood by way of salary, and may even affect our pension and retirement.

If we were management employees, job specifications would be drawn up for our position, as they are for every management position in the public and civil service. These job specifications set out the qualifications, duties and responsibilities, and then the position is classified. The classification results in an appropriate salary being paid for the position. The benefits of the position are clearly set out in statute.

Our position of course is not subject to classification and therefore there is no guide for anyone to use in determining an appropriate salary. We do not fall under a manager who controls a budget but receive assignment directions from judges, so there is no person responsible for our accommodations. In our view, it is not even clear in statute whether we are entitled to a pension.

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As recently as June 14, 1993, I expressed my concern to the Deputy Attorney General regarding the lack of clear evidence of our designated membership in the

public service pension plan, and I refer you to document 7. In reply, I received the letter and enclosed documents marked number 8. I ask you to view the first paragraph of the second page of those documents. It would appear they had great difficulty in finding any evidence to establish we were in a pension plan, but they found a 1968 order in council and sent it to me as proof that we have a pension.

We now refer you to the order in council itself. It's the last page in the group of documents in number 8. It is a tattered piece of paper with all kinds of alterations referring to a piece of legislation no longer in existence, pertaining to a class of justices of the peace now extinct, and bearing a signature that cannot be deciphered.

We ask each of you if you would be content to rely on this document to establish your pension. We feel the ministry officials should have been too embarrassed to even send this document to us.

This uncaring attitude with regard to justice of the peace pensions has a long history. Several years ago, a report of the Royal Commission on the Status of Pensions in Ontario was released, and I refer you to document 9. It clearly recommended that all members of the judiciary should be in the same plan. The Mewett Report to the Attorney General on the Office and Function of Justices of the Peace in Ontario contained the following recommendation for justices of the peace: "That an acceptable pension plan be established."

Notwithstanding these recommendations in two separate reports, reports commissioned by the government, when a separate pension plan was devised for the provincial judiciary a few years back, the justices of the peace were deliberately excluded from the plan.

We feel the ministry's position on the status of justices of the peace could be accurately described as follows: Justices of the peace are members of the judiciary for legal reasons only, but in policy and practice they should not be considered or treated as members of the judiciary.

Referring to the bill itself, our first question was why the Justices of the Peace Act was being amended at all. In our view, it was quite clear from the first draft that the purpose was to eliminate the office of the coordinator of justices of the peace. The duties of the present coordinator were to fall under the office of the Associate Chief Judge, who would also have other responsibilities. Justices of the peace have past experience with such a system. We discovered that when the interests and concerns of justices of the peace were the responsibility of a chief or senior judge who also has other responsibilities, the interest of the justices always seemed to be secondary. That is one of the very reasons the office of the coordinator was established. It is our opinion that the office has worked very well in its first few years of existence. You will understand our surprise and dismay when we learned it was to be eliminated.

We have voiced strong objections to both the Chief Judge and the Ministry of the Attorney General regarding changes to the office of the coordinator. It is our view that the role of the coordinator is a full-time position and cannot be performed properly on a part-time basis. If anyone has any doubt about this fact, they need only

study the hectic schedule maintained by the current coordinator for the past three years. There are approximately 600 justices of the peace in the province, and our position is that it is not unreasonable to have one person appointed with the exclusive responsibility to operate the office of the justice of the peace.

In recent weeks, we have been assured by the Deputy Attorney General that it is not the intention of the government to eliminate the office or reduce the role of the coordinator. We have also been assured by the Chief Judge that it has never been his intention to eliminate the office of the coordinator. We have been given to understand that the only change being made is in the title and that the office will continue to exist in its present form. If this is the case and the only change being made is in the title, then we have no objection to the amendment.

There is also a last-minute amendment to the Justices of the Peace Act being proposed that would make available to the Justices of the Peace Review Council the dispositions that the bill makes available to the Judicial Council. We were first notified April 24, 1994, that such amendment may be put forth, but it was some time later before we received the draft amendment through the coordinator's office. It expands the dispositions available to the review council after a hearing is held into the conduct of a justice of the peace. It appears that these additional options are available only after a full public hearing has been conducted. Also, in relation to provincial judges, the Judicial Council has the authority to set up a mediation process for complaints. This does not appear to be the case for justices of the peace.

This committee may wish to investigate whether there is some method of the review council taking disciplinary action and dealing with less serious complaints prior to putting the taxpayers to the expense of a full public hearing. Having not had the opportunity for a more detailed study of the matter, we offer no specific suggestions at this time.

As a general principle, the position of both justice of the peace associations is that anyone performing a service for the public, especially anyone who is being paid out of the public purse, must be accountable for their conduct. We fully support the concept that there should be a complaint and discipline process for members of the judiciary that is both fair to the public and the judicial officer involved. We also support the position that the process should be consistent for all members of the provincial judiciary.

I refer you now to document 10. You will see by the letter we received notifying us of a possible amendment that the reason for the amendment was to "make this improvement and the complaints and discipline process for justices of the peace, consistent with what is being done for other members of the provincial judiciary."

We have to question why the government is being inconsistent in its efforts to be consistent. The bill very clearly sets out a method for dealing with the remuneration of all members of the provincial judiciary, with the exception of justices of the peace. Would it not be consistent to provide a method of dealing with the remuneration of justices of the peace? The bill enshrines

the Provincial Judges Remuneration Commission into the Courts of Justice Act and makes the findings of the commission in relation to salary binding on both the government and the judiciary. Would it not be consistent to enshrine the Justices of the Peace Remuneration Commission into the Justices of the Peace Act and make the findings of the commission in relation to salary binding on both the government and the judiciary?

There are a number of questions we would like to see debated as the committee discusses sweeping changes pertaining to the judiciary in Bill 136:

(1) Why is the justices of the peace branch of the judiciary segregated from the other branches of the provincial judiciary?

(2) In providing a method of determining remuneration for the provincial judiciary, is it proper to exclude one branch, namely the justices of the peace?

(3) How are justice of the peace salaries determined at the present time?

(4) How have justice of the peace salaries been determined for the past 25 years?

(5) What criteria are employed and what comparators are used in determining justice of the peace salaries?

(6) Why are justices of the peace excluded from the pension plan established for the provincial judiciary?

(7) Are justices of the peace employees of the Ministry of the Attorney General? If not, who is their employer?

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Our association is not here today to ask this committee to rewrite this entire bill by amending the Justices of the Peace Act so that it contains a corresponding section to every section of the Courts of Justice Act pertaining to provincial judges. However, we respectfully request that the committee consider the importance of a truly independent judiciary in a democracy. We urge you to treat this as a non-partisan matter and give unanimous consent to three amendments as follows:

(1) Amend the Justices of the Peace Act to incorporate the Ontario Justices of the Peace Remuneration Commission into the act.

(2) Amend the Justices of the Peace Act to make the recommendations of the Ontario Justices of the Peace Remuneration Commission in relation to salary binding on both the government and the justices of the peace.

(3) Amend the Courts of Justice Act to incorporate the Justices of the Peace Act as a new section of the act.

The adoption of these amendments would help end several years of discrimination, clearly acknowledge that justices of the peace are members of the judiciary, and would enhance the independence of the judiciary by taking some control away from the Ministry of the Attorney General and putting it in the trust of an independent body of citizens under the Ontario Justices of the Peace Remuneration Commission.

Part of our mandate as members of the judiciary is to ensure that persons are treated fairly and equally under the law. We are requesting that the members of the Legislature ensure that justices of the peace receive fair and equal treatment under the law. Thank you.

Mr Robert Chiarelli (Ottawa West): I apologize that I was late getting in and didn't hear the first part of your submission, but I'm interested in knowing what level of consultation with your association existed before Bill 68 was introduced last June or July. As you're aware, this legislation was introduced in one form last summer, was subsequently withdrawn because there was a lot of concern from a number of groups, and was reintroduced as Bill 136. To what extent were you able to have meaningful dialogue before Bill 68 was introduced for first reading on the issues in this bill, and second, to what extent did you have meaningful dialogue with the ministry when Bill 136 was introduced, or when the legislation was reintroduced?

Mr Devine: Prior to Bill 68, there was no dialogue whatsoever. We received the bill and saw they were eliminating the office of the coordinator and we started making our views known.

After Bill 136, I attended one meeting to argue about this point. I also had a meeting with the Chief Judge. At that meeting, as I mention in the brief, the government was assuring us that there was no intention to eliminate the office of the coordinator, and when I met with the Chief Judge he said that wasn't his intention either. But it appeared to us in the first draft of the bill that that was the intention.

Mr Chiarelli: In terms of the dialogue you've been having with the government relative to your three recommendations, what's your understanding at present of the government's response to these three recommendations?

Mr Devine: I know they're opposed to making the remuneration commission findings binding on both. At that one meeting we had, I mentioned putting the Justices of the Peace Act into the Courts of Justice Act; they certainly haven't done it here, but they didn't say they were outright opposed. To the other amendment of putting into the Justices of the Peace Act the remuneration commission, they've said no as well.

Mr Winninger: I listened very carefully to a number of your points, and I have a couple of questions arising out of your submissions.

First of all, you've suggested that the Attorney General introduce appropriate measures to ensure that your status and independence were properly secured. I recall the fact that it is only relatively recently that we changed the way in which appointments to justices of the peace are conducted, with the establishment of local advisory committees made up of a diverse group of individuals that would recommend appointments of justices of the peace to the Attorney General; and also the introduction of full- and part-time salary remunerations to JPs as opposed to piecework in the past. Does that not go a long way towards establishing independence and the kind of status that you're seeking here today?

Mr Devine: I agree that the new process of appointments is a great improvement, but as I recall, it was merely a policy statement by the Honourable Howard Hampton in the House. Of course, if it's followed—and it appears it's being followed—that's fine, but it wasn't put in as an amendment to the act, nor were we consulted before. But having said that, that is a much better situ-

ation and certainly enhances independence in that a committee is choosing these people and you don't just have perhaps the friend of a friend of somebody automatically appointed. It does a good deal to enhance the independence. It is a step forward.

In the second point you're making, the conversion situation is an attempt to put everyone on salary but split the job into two different categories, presiding and non-presiding, and have two different salaries. But the bottom line is that there is no proper method of determining what those are.

They're starting a thing called the Justices of the Peace Remuneration Commission, but as it's presently set up, it's merely nothing more than an advisory board. It can hold hearings, make recommendations, and we would even like to know who makes the decisions. We assume it's civil servants in the Ministry of the Attorney General, under the Deputy Attorney General, who decides their salaries. That's all we can find out. Perhaps the committee can find out exactly how it's done.

The Provincial Judges Remuneration Commission is much different. It's right in the act and it's binding. That's what we would like to see, and we think that's fair. If we are properly paid, the ministry has lawyers and finance people who will convince the committee of that. If we're overpaid, they'll convince them of that and our salaries will be reduced. If we are underpaid, hopefully they will take steps to correct it.

Mr Winninger: I have a number of other questions, but the Chair has cautioned me that time is exceedingly short, so I'll make this general. I understand that there's a province-wide association of justices of the peace that numbers some 500 members, plus or minus.

Mr Devine: Yes, there is.

Mr Winninger: And your representation is approximately 40 justices of the peace from the Toronto area?

Mr Devine: We're 48, I believe, at the present time.

Mr Winninger: I also understand that the province-wide association supports the bill as currently drafted. It may well welcome the amendments we're making around added dispositions to the Judicial Council as they affect justices of the peace, but is it not true that the province-wide association actually supports the current wording of the bill? If so, why is it that your particular group takes a different position?

Mr Devine: I can't agree with you there. The Ontario-wide association—the president's actually observing today. We're not at differences in what's contained in here; they just didn't feel this was the forum that anything would be done. If you're asking me, are they of the opinion that the Justices of the Peace Remuneration Commission should be binding and placed into the act, the answer is very much yes, but they've been told it isn't going to be done, so they've left it at that. I am certain they believe it should be binding, and as a matter of fact I've been at meetings with their president and we both asked the same question: Can we not make this similar to the judges?

1640

Ms Murdock: We had a discussion beforehand but,

surprisingly, we didn't discuss any of this. I articulated with the crown and spent almost my entire articling year before justices of the peace, so I have an feeling for them.

I want to go to where you change the coordinator to Associate Chief Judge—Coordinator of Justices of the Peace and ask the parliamentary assistant for a clarification. According to page 6 of the presentation, the change is being made in title only. I'm not reading it that way. I'm reading it that an Associate Chief Judge would be given the title of coordinator of justices of the peace. Am I reading that wrong?

Mr Winninger: My understanding is that there was a desire to link the provincial court more closely with the justices of the peace, and in fact what we have here is provision for the appointment of the office of the Associate Chief Judge—Coordinator of Justices of the Peace. This associate judge will be vested with responsibilities for the justices of the peace as a coordinator, so it's not as though we're taking that particular responsibility and diffusing it in any way.

Ms Murdock: But it would mean that the body that is being the coordinator at the present time would no longer be in charge of the 600 justices, that a person who has other duties as well would coordinate the justices. Is that what you're saying?

Mr Winninger: The Associate Chief Judge may in fact have many duties, but one that will be specifically assigned will be the duty of coordination. It's not to say that a judge of the provincial court, an Associate Chief Justice, can't deal with many different responsibilities at one time and that it should be within the exclusive purview and that one particular judge should devote all of his or her time to those responsibilities.

The Chair: We'll have to find another time to discuss this matter. Mr Deacon and Mr Devine, thank you very much for appearing before this committee today.

CANADIAN BAR ASSOCIATION—ONTARIO

The Chair: I invite Kevin Carroll, Stephen Whitzman and Brad Hartley, from the Canadian Bar Association. Thank you for coming. We have half an hour.

Mr Kevin Carroll: Thank you very much, Mr Chair, ladies and gentlemen. It is always a pleasure for the Canadian Bar Association of Ontario to appear before this committee, as we have made many submissions to you in the past on a great variety of bills. Today I am happy to tell you that the bar association wholly endorses what this committee has done in terms of this legislation, which I suppose to some of you will come as a bit of a surprise. Frequently we are here to criticize legislation or proposed legislation, sometimes very vociferously and other times perhaps a bit more subtly, but when we attend to be critical, I think it is also balanced and fair that we come and advise you that we think you have done an outstanding job on this piece of legislation.

As was mentioned a few moments ago to our predecessors here before you, the bill was in a previous form and many amendments and changes have been made. We are particularly pleased that a number of the suggestions and submissions in two of the bar association's recom-

mendation papers to you have been adopted, that is, particularly recommendations of the Judicial Appointments Advisory Committee—Mr Whitzman is available to respond to questions any of you may have in that regard—as well as the submission to the Attorney General on the composition of Ontario Judicial Council.

I think often that when a bill of this sort is in its drafting stage, in its conceptual stage, many have a variety of ideas as to how it ought to read. The concepts which are set forth in this particular bill require considerable forethought, because you must anticipate what the users of the justice system must have and later be forced to live with.

In our respectful submission to you, a great deal of forethought and insight has been shown here, and we wish you to know that, with our warmest congratulations, and urge that each of you with respect to your own parties will pursue the speedy passage of this legislation.

If you have any questions for us, we would be happy to respond.

Mr Chiarelli: There's been some comment about the speed with which the new uniform Family Court will be implemented. Is the bar association satisfied with the time lines on implementation of the uniform Family Court?

Mr Carroll: Generally, yes, Mr Member. I have discussed this matter in detail with the chair of our family law section, Mr Gerald Sadvari, and his section, having reviewed it in great detail, is quite satisfied. The sooner the better, of course, because I think there is certainly a public need for disputes to be heard within that setting and the changes that you have made.

Mr Chiarelli: What's your understanding of the reasons for the delay or the long lead time to get the province fully up to speed with this initiative?

Mr Carroll: Are you referring to what was the pilot project in Hamilton-Wentworth?

Mr Chiarelli: Basically, yes. What we have had is a pilot project in Hamilton-Wentworth, we're now legislating the uniform Family Court, and my understanding is that within the foreseeable future it will be extended to two, perhaps three, geographical locations across the province.

Mr Carroll: I'm not certain what the strategy is in terms of the geographical locations. I would have thought that with a pilot project started in Hamilton-Wentworth something like 13 years ago, that would have been sufficient time for us all to have understood how that court would work.

Some years ago, when I was not sitting in the chair that I am now but involved with the bar association, I had considerable discussion with one of the judges who sat on that pilot project, and it was his view that there was no good and rational reason why that court would not have sat throughout this province.

I suspect because there are some overlapping jurisdictions between the provincial court (family division) and the federal appointees or the appointers of the new Unified Family Court judges that there are some financial considerations there, as well as working out some administrative details.

We would urge you perhaps to take to your counterparts in Ottawa a message of perhaps giving this some priority. On Saturday I had the opportunity of speaking with the federal Minister of Justice. He does consider it a matter of high priority.

Mr Chiarelli: My understanding, having also spoken to him two or three weeks ago, is that from the federal side they are very willing to appoint judges to fill the complement that might be necessary to extend the Family Court across the province, but for their part, they're waiting for a commitment from the province to provide the necessary infrastructure—courtroom space, mediators, everything that goes with the provincial side of spending. The federal government was not going to appoint judges unless they were satisfied they had a commitment that the infrastructure was there so they'll have infrastructure to work with.

1650

Mr Carroll: That I think is an extremely important point, because, as I think we know, certainly in the larger urban centres the courthouses are already overburdened. If there were appointees travelling or migrating from the now provincial court (family division) to the Unified Family Court, then the courtroom facility may not be as significant a problem. However, I do think that space is always at a premium in almost any courthouse in the province.

I practise in Barrie and I can assure you that there isn't one courtroom on any given day that's not in use. There is a flow back and forth between the General Division and the Provincial Division, so that if the General Division judge is not sitting or using a courtroom, that will be made available. A good spirit of cooperation is seen in a number of jurisdictions, but infrastructure is a significant point.

Mr Chiarelli: One last, final point. Eight or 10 days ago, the Criminal Lawyers Association presented a brief to us and indicated that they had some concerns about the Judicial Appointments Advisory Committee. Are you familiar with or aware of those concerns?

Mr Carroll: I am to the extent, and the bar association probably shares that view, if I recall it correctly, that we thought it was somewhat overstaffed with laypersons. I think it is certainly wise, and in this time and age we are to some extent demystifying judicial appointment, which I think is a laudable approach. However, when looking to the selection of judges, the judiciary and the legal profession may have an opportunity through their own networking to gather the information more quickly.

For example, if a lay member of the panel wanted to make some inquiry about a particular lawyer as to whether or not he/she would be suitable for an appointment, I think it would be harder for the layperson to gather reliable data, whereas someone in the legal profession probably, if not on a first call, certainly by a third call, would have some better idea of the suitability of the candidate. To that extent, we share that view.

I might urge you, by way of minor criticism, if you were so disposed to amend the bill, to perhaps reduce the

number of laypersons marginally and increase the number of legally qualified persons by the corresponding margin.

Mr Chiarelli: Thank you very much. We appreciate your support for the legislation. As you're probably aware, both opposition parties strongly support the legislation and would like to see speedy passage as well.

Mr Winninger: I'd also like to thank you for coming and for your own support for the legislation. The Canadian Bar Association has always offered strong advocacy for the legal profession while at the same time promoting the public interest. I'm also happy to hear that our legislation has responded to some of the very specific requests and submissions you've put forward. Thank you for your remarks today.

The Chair: Thank you all for making this appearance and for helping us out with this piece of legislation.

JON SNIPPER

Mr Jon Snipper: Thank you. First of all, I'd like to commend Ms Bryce, I think it is, who was so kind in assisting me in getting time and telling me what I should do and where I should go. You've got a very, very excellent clerk. I must say I was very impressed. I've never dealt with one before, but if this is the example that's being set, it's a high one.

Next, let me tell you a bit about who I am. I'm coming down as a sole practitioner who is certified as a specialist in family law. I've been practising 22 years at the bar and have a fairly extensive civil litigation background and now I'm pretty much restricted to family law.

Unfortunately, the County of Carleton Law Association, of which I am a member, simply did not have time to put together a brief to present to your committee. That association is vitally interested in what I would call the Unified Family Court, called in this legislation "the Family Court," as we have significant problems in family law matters in Ottawa that we feel can partially be addressed by the implementation of this court in Ottawa.

However, in terms of the submission I make, I have consulted with other lawyers, family law lawyers, and I have spoken to a provincial court judge who was extremely familiar with family law matters before that person went on to the criminal division of the provincial court. The remarks I am going to make, certainly about the legislation, probably would be reflected by virtually everybody in the family law section of our local bar.

I'd like to say, first of all, that I support fully the remarks that I've just read in the paper presented by the Ontario Family Law Judges Association dated May 27. Ms Bryce very kindly just gave me a two-part section and while I may not support some of the general comments made about judicial independence etc, I certainly support the comments made in part 2 of their remarks about the need for a Family Court. So I'd like to go on record as stating that.

There are some housekeeping matters that I'd like to bring to your attention as a family law practitioner that are omissions in the act. They're not serious, but they're the kinds of things that can bedevil the new court and cause procedural wrangles which are completely unnecessary at a time when the courts are burdened with

substantive matters and the last thing they need is to waste time sorting out procedural matters that can be easily done here in this committee and in the Legislature.

I'm going to address in the first part of my paper, point number 1, section 21.8(3), which is the schedule of matters that are to be heard by the new Family Court. There are a number of glaring omissions, in my opinion, and these are opinions, as I say, shared by other family law practitioners. I'm not sure why these omissions have occurred or whether there's some reason or it's just oversight. However, I'm down here at my own expense and time to hope to draw them to your attention.

The first thing absent is part V of the Succession Law Reform Act. That is what used to be called dependants relief legislation, and that is really cases in which after somebody who has died who has an obligation to support a dependant, namely, a child or spouse, the child or spouse has the right to sue the estate for proper support.

It's my view, and I think the view of every family law lawyer, that that properly belongs within the jurisdiction of the Family Court and it's an absolute mystery to all of us why it's missing. In fact, you don't see general practitioners practising that kind of law. This is part of the family law specialist's domain and to find yourself in the general court litigating over support, which should clearly be in the Family Court, is odd, as I say.

It's not there, at least in the draft of the act that I was kindly sent by Ms Bryce, but it should be there and it's a mistake not to be there. We're going to end up with General Division judges deciding support issues who have no familiarity with the general level of support, how it's assessed and all the rest of it. This is clearly in the domain of the Family Court. Please amend the legislation to make sure it's there.

The second thing that's missing, and I'm sure it's unlikely to have been thought of because it doesn't arise much, but it arises frequently in Ottawa, is that appeals under the Arbitrations Act on family law matters should go into the Family Court. While arbitration, I gather, is not widespread outside of Ottawa, it is being used more and more frequently. In fact it's fair to say that most senior family law lawyers in Ottawa, because of very grievous difficulties with the General Division court in Ottawa, are now arbitrating most issues. Nobody wants to wait anywhere from a year to three years to get their cases heard.

1700

Under the Arbitrations Act there is a right of appeal from an arbitrator to the General Division court. If you are going to try to keep the Family Court dealing with family law matters, then clearly appeals from arbitrators on family law issues should be dealt with in the Family Court. This is, I suggest to you, a housekeeping matter that wouldn't cause anybody any grief but would do all of us in the family law field a big favour, so that where there are decisions coming down interpreting the law as it applies to arbitrators' decisions in family law matters, those matters are done by a court that's competent and skilled in family law matters and not the General Division court.

Another issue that's missing—again, just housekeeping, but if you don't do it, you're going to cause a lot of grief for the public and a lot of grief for us as lawyers and completely unnecessary expense to the public—is having dual proceedings in different courts unnecessarily, proceedings between spouses under the Partition Act. It happens frequently that husbands and wives, covivants of whatever sex, own property together. What happens when those relationships disintegrate is that quite frequently the property has to be sold or be dealt with. That, by law, is dealt with under something called the Partition Act, which deals with property that's held together.

Again, that seems like an obvious matter that should come into the schedule of cases that are dealt with. You would have to be selective, obviously. It would have to be Partition Act proceedings between persons who are conducting other litigation or between spouses or, as I call it, near-spousal relationships. That's the best word I can use to give you that catch-all phrase for the myriad of relationships that now are called spousal. Indeed, if the Ontario Law Reform Commission has its way, almost all these relationships are going to be treated in the same way as married relationships between heterosexuals.

The Partition Act is a housekeeping matter and the appropriate wording has to be adopted to make sure that you don't catch people who aren't in a spousal or near-spousal relationship.

Another housekeeping matter is damages arising out of breaches of domestic contracts or arising from the spousal relationship. Believe you me, folks, there is a growing field out there for lawyers in terms of spouses and near-spouses suing one another for the kinds of wrongs that they inflict on one another other than the routine support and property division.

I myself have been involved in a case in which a wife was suing her husband for damages for his brutal physical conduct towards her. I have been involved in a case in which a woman launched a proceeding to sue her husband for herpes that she received during the period of the marriage. These were cases where one was joined in another proceeding but one was completely independent, outside of the proceeding, and wouldn't have been caught by this legislation.

I encourage you that, if your point is to try and catch in one court family law matters, this kind of a matter be brought into play. It's interesting. If you were actually to look at the legislation, you'll find that the schedule does deal with domestic contracts. Strangely enough, it doesn't talk about damages for breaches, and that's a growing field. It talks about interpretation, enforcement or variation of these contracts, but nothing about lawsuits for damages. That should be there.

I'd like to reiterate that the reason I'm making these points is for the benefit of the public, so that members of the public don't find themselves going to unnecessary expense of litigating in two separate courts or being the guinea pigs who spend a fortune on lawyers to decide whether or not an interpretation of the act includes this kind of relief. I don't want to have to spend time explaining to a judge why she or he should have to include something in an act that can be corrected here and now.

There's another issue, point E in my brief, and that relates to something called the *parens patriae* jurisdiction. For those of you who aren't lawyers or those of you who are lawyers but haven't practised family law, there is a general provision by which what used to be known as the Supreme Court of Ontario, now the Ontario Court (General Division), had the right to supervise the welfare of children. If it was found that there was a loophole or a gap in the legislation affecting children, the court would exercise its general jurisdiction as the protector of children to do what was right for the child even though the legislation didn't address the issue.

The courts have said that the only court that has that jurisdiction is the Ontario Court (General Division), which is the successor to the Supreme Court of Ontario. It's imperative that this jurisdiction be removed from that court and be put in the Family Court, where there is a Family Court, for the obvious reason that that's the court that's now going to be dealing with all family law matters. So please give that court the right to decide matters on a *parens patriae* basis.

Clause F relates to having a catch-all clause, because lawyers' ingenuity, as many of you know, is boundless, especially when it comes to thinking of new things that may increase their billings and change the law. I'm being slightly cynical. If you don't have a catch-all phrase, cleverly designed, so that in so far as somehow we've missed what should be done by naming things—a catch-all phrase that deals with people in spousal or near-spousal relationships litigating a matter that isn't caught in any of the above. And that should again go in the Family Court. I've been practising 22 years, and I could never have dreamed then of the sea change that has occurred in family law and the kind of actions that go on between spouses and near-spouses in the courts. In 20 years, there's been a monumental change. Rather than trying to waste the Legislature's time every time some court decides a new right of action as between these people, why not put a catch-all phrase so that the right court, that is the Family Court, can be dealing with all matters dealing with family law?

That deals with my submissions in terms of amendments to this schedule that I think are necessary if you want the Family Court to be doing all the things that we as family law lawyers are doing as part of our practice. Please just give us one court to practise in; don't spread us into two courts. It's just too expensive for members of the public, and the level of competence in family law matters in the General Division court is going to descend even lower than it is now if you're not even practising it at all.

Section 21.9 is, in my view, a fundamental mistake, and why it is cast the way it is, I have no idea. Section 21.9 deals with the issue of joinder of causes of action to the litigation that's going on under the schedule litigation. For instance, the way the schedule is right now, if you sued someone for a divorce, one spouse sues another for divorce, and also has to bring a Partition Act application or sues for damages, as the legislation reads now, that person is going to have to go to the expense and waste the judge's time deciding whether or not that add-on can

indeed be added on and tried in the Family Court.

It's my submission to you that it should be the reverse; that once you're suing somebody, let them sue them in one court, and if the person who is being sued thinks that for some very good reason there should be two lawsuits and two separate courts, let that person take up the judge's time trying to persuade a judge why they should be in separate courts. The onus is in the wrong place, and you should be able to issue it as of right.

As a housekeeping matter, that section unfortunately doesn't state when you should make your application for leave. It seems to intimate that the leave should go on in front of the judge who's about to hear the trial. That of course makes no sense at all, to be litigating something right up to the point of trial and then be met with a motion saying, "No, I want you to start all over in another court." It should be made clear, in my submission, that if you're going to make people join actions together, which is the only sensible thing to do, believe you me, then at least make the person who wants to object to the joinder or seek the leave, as the case may be, have to do it right away, right at the beginning so the matter is straightforward. I deal with that in the second paragraph of point 2.

1710

Those were what I think are the matters of good housekeeping, to make our lives as family law lawyers easier, to make justice more accessible to the public and cheaper. If you don't make these changes, guaranteed you're lining lawyers' pockets, and you're going to start with two courts having to thrash this out. Folks, there is simply no excuse for these changes not to be made. I can't imagine why they wouldn't be made. I'd like to hear from somebody, if there's some expert who's drafted this, as to whether there's any reason why these things weren't done.

I want to dwell now on a little more philosophical—

The Chair: Mr Snipper, 15 minutes have elapsed, a minute or two more. If you plan to go through it, we may not have time for questions.

Mr Snipper: Then I'll be extremely brief.

A significant point to be made is that for some reason there is nothing in the legislation that appoints a senior judge in the locality where there's a Family Court. I cannot emphasize strongly enough how important it is for a court of this nature to have a leader, somebody who can be dealt with, who, when there's a bench and bar committee, can be gone to when there are difficulties, who can give leadership to the court. A court without a local leader is a rudderless ship, quite frankly.

With all due respect to the current Chief Justice of Ontario or Justice David Steinberg, they may be brilliant men but they already have too much to do. Don't ask somebody 150 or 200 or 300 miles from Ottawa or any other centre to start being in charge of the administration of a local court, a Family Court in a place like Ottawa. It's a very fundamental mistake, and I bring this from all of us as lawyers. We want to have a regional senior judge for this court, not somebody out of town who's going to come in on a white horse and try to fix things up when

they go wrong. It's a very large mistake in the legislation and I don't know why that's occurred. Whether it's financial or otherwise, it's a mistake, and there should be someone designated.

There is a problem, and I'll just summarize. It relates, in the Family Court matters, to the business of rotating judges in and out of the General Division into the Family Court. Family law is a recognized specialty now in Ontario. You get certified as a specialist by the law society. One of the banes of the existence of family law lawyers is finding yourself in front of a judge who has no interest in or experience in family law, which I think would characterize the majority, if not the vast majority, of General Division judges.

The way the legislation is structured, it seems to me that there is every opportunity for turning this court into nothing more than an adjunct of the General Division court. I make the point in my paper about the fact that there is a failure to specify in the bill what is intended with the permanent judges. How long are they supposed to sit there? Is it for only six months of the year and rotate out? How often are the other judges who aren't family law experts to come in? There are all these kinds of issues.

The last thing I'll say is that you have incorporated a voluntary evaluation of provincial court judges. I think central to the proper administration of judges and accountability of judges now is evaluation of judges at all levels. It should be compulsory and it should be there. There just is no excuse any more for judges not to be part of some evaluation process by the users of the system, and I've dealt with that. I don't know whether constitutionally you could require an evaluation process for General Division judges. It may not be possible; I don't know. But if you ever get the opportunity, do it, and I think that on the provincial court level it should be compulsory. That's the only way there is any way of getting at judges, outside of reporting them individually.

Those are all the comments I'd make in the time I've got, and I hope you'll read the paper.

Mr Chiarelli: I want to thank Jon very much for coming in and making his presentation. I can't respond technically to the points you've been raising. They appear to be very substantive and significant points that perhaps have been overlooked. I would encourage the parliamentary assistant and also people in the ministry to look at your brief very carefully. I will have it by my side when we're doing clause-by-clause, raising questions on it and trying to monitor whether any of your concerns can be accommodated. I do want to thank you for giving us the benefit of your years of experience and comments on it. I think it was a very well-put-together brief.

I want to mention to the Chair and perhaps the clerk that I was under the impression that we had a provision for per diems for witnesses and covering expenses. I certainly would suggest, especially in view of the substance of the brief, that the committee consider a per diem for this witness and covering his expenses.

The Chair: Under some circumstances the Chair would do that. But if that's the request of the committee, we could just approve that today, if you're all in favour,

and we'll make the necessary arrangements.

Mr Snipper: I wouldn't want a per diem. I don't mind coming down, but if anyone wanted to cover at least my train fare down here, I'd be delighted.

Ms Murdock: Isn't transportation normally covered?

The Chair: When requests are made by individuals, as a committee we tend to decide how to deal with that.

Ms Murdock: Given what lawyers can make in a day and the fact that you've come all the way from Ottawa, you won't get anywhere near what you would have made in one day at work. We usually cover it; I think that goes without saying.

Mr Snipper: I brought my computer on the train, so it wasn't a complete waste.

The Chair: Mr Snipper, if you'd contact us through Ms Bryce, we'll make the necessary payment for some of the bills you've incurred.

Mr Winninger: Thank you as well. Now that we've got our money concerns out of the way, maybe we'll return to your very specific suggestions. Before I was elected in 1990, a good part of my practice was family law, and I think I can see where you're coming from on a number of these points. However, I need to give you, with the assistance of our policy advisers, some technical responses to your concerns.

If we look at A, B and C, as you're probably well aware, if jurisdiction under the Succession Law Reform Act, the Arbitration Act and the Partition Act were included in this legislation, it would then, I'm told, become exclusive to the Family Court of the General Division. That's certainly a concern and that's why 21.9 was put in there, under appropriate circumstances to yoke these kinds of actions together.

As a practising family lawyer your experience may have been different. I didn't get as heavily involved, perhaps, in succession law reform matters as you do, but 21.9 is designed to address your concern that you not wind up in two courts where it would be entirely appropriate to be in one, but the jurisdiction and the exclusivity of jurisdiction would be a concern.

I might just respond to a few of your points, and then if there's time you can respond in turn. Point D, in regard to "damages arising out of breaches of domestic contracts, or arising from the spousal relationship": You've pointed out quite correctly that in the schedule to 21.8, paragraph 2 is mentioned: proceedings for the interpretation, enforcement or variation of a marriage contract and so on. We believe that damages are subsumed under enforcement there; that's the advice I have today from our policy advisers. You're shaking your head. Maybe I can just make two other points and then, if there's time, we could hear from you again.

1720

In terms of paragraph E and your concern about *parens patriae* jurisdiction being vested in the Family Court as well, I'd just point out, in section 21.1, that what we're dealing with is a branch of the Ontario Court (General Division), known as the Family Court, so it's logical to conclude that since it's a branch of the General Division the *parens patriae* jurisdiction would follow by virtue of

the fact that it is, in many respects, a section 96 court that would enjoy *parens patriae* jurisdiction.

There's just one other point I need to make in regard to a further point you made about the qualifications of Family Court judges, the concern that we don't find judges appearing in the Family Court who have little interest in family law matters. I think that's a very valid concern, judging from my own experience as well as what you've shared today. But subsection 21.4(2) indicates that a judge will not be assigned to the Family Court or preside over the Family Court before receiving authorization from the Lieutenant Governor in Council. It would be our position that those judges who do preside over our Family Court are those who not only display an active interest in matrimonial matters, but also are judges with the appropriate qualifications to preside in those courts. That's our response.

Mr Snipper: I'd like to be treated equally with the justices of the peace.

In response to your point that it would then become an issue of sole jurisdiction of the court, I'm not quite sure what it means. If it means that part V of the Succession Law Reform Act and the Partition Act, circumscribed to deal with the appropriate people, came to be dealt with solely by that court, I am in favour of it. I say yea, that's what I want. I do not want these General Division judges, who are not family law matters, dealing with it. So I don't see that as a fear, I see that as an improvement.

In terms of *parens patriae*, you may be right. The point is this: I believe in drafting legislation and contracts that make things clear. A classic example is the use of the word "enforcement." I guarantee you, if you do not add the word "damages," there will be litigation over whether damages are included within the word "enforcement," and some poor member of the public is going to have to pay someone to argue over that, because there may be enough at stake for someone to make the point. Why bother relying on a general policy decision and what somebody thinks will be included? The truth of the matter is that "enforcement" now has a special meaning out there because there's an act, there's something called the family support plan, that enforces judges, so I think there's going to be a propensity in the courts to view enforcement as being just that. Once you have damages, you then enforce the judgement for damages. But establishing damages is not an enforcement of the contract.

You may be right, but please don't make a member of the public have to litigate it. Just add the words there and then no one will ever have to litigate it and no judge will have the luxury of making the mistake of ruling that it doesn't, and so on and so forth. That's the gravamen of my remarks of this nature. Don't leave it to someone to have to litigate. We, in the legal profession, appreciate the kindness of the opportunity to do that, but members of the public deserve better. They need clarity, they need certainty, and that's one of the ways you can do it. That would be my response in terms of the issues you raise, Mr Winninger.

Mr Winninger: Just one brief word, and I'm not being at all argumentative here. Your position, and I understand why you would say this as a family lawyer, is

let's bring partition, arbitration, succession law reform into the Family Court.

I've known many lawyers who only did estate law and never had anything to do with family/matrimonial matters or appeared in Family Court. Similarly, I've known lawyers who only did real estate and dealt with matters of partition in a context totally divorced from the matrimonial context, and the same with arbitration.

I admit it's a bit of a value judgement as to where you place it. If it does result in exclusivity, which I'm told it does, there are probably countervailing arguments to place these three procedures in a separate court, except where it's quite clear and logical that they be linked and be dealt with in one proceeding.

Mr Snipper: I'm hoping there's some dialogue that can go on after this, whoever your policy adviser is that I could speak to and argue the issue out with. I'm interested enough in it to take the time.

The Chair: You may want to call the members, or they might call you. Mr Snipper, thank you very much for taking the time to come from Ottawa to appear.

I just remind those of you who have amendments to bring to this committee to submit them before 12 o'clock tomorrow, for clause-by-clause.

The committee adjourned at 1726.

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Substitutions present/ Membres remplaçants présents:

Murdock, Sharon (Sudbury ND) for Mr Bisson
Wood, Len (Cochrane North/-Nord ND) for Mrs Harrington

Also taking part / Autres participants et participantes:

Winninger, David, parliamentary assistant to Attorney General

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Official Report of Debates (Hansard)

Tuesday 31 May 1994

Journal des débats (Hansard)

Mardi 31 mai 1994

Standing committee on
administration of justice



Comité permanent de
l'administration de la justice

Courts of Justice
Statute Law
Amendment Act, 1993

Loi de 1993 modifiant des lois
en ce qui concerne
les tribunaux judiciaires

Chair: Rosario Marchese
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STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 31 May 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 31 mai 1994

The committee met at 1548 in room 228.

COURTS OF JUSTICE STATUTE LAW
AMENDMENT ACT, 1993LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES TRIBUNAUX JUDICIAIRES

Consideration of Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act / Projet de loi 136, Loi modifiant la Loi sur les tribunaux judiciaires et apportant des modifications corrélatives à la Loi sur l'accès à l'information et la protection de la vie privée et à la Loi sur les juges de paix.

The Chair (Mr Rosario Marchese): We're into clause-by-clause consideration of Bill 136, and we'll begin with section 1. Any comments or discussion on sections 1 through 7?

Shall sections 1 to 7 carry? Carried.

Section 8. There's an amendment.

Mr David Winninger (London South): I move that subsection 21.2(2) of the Courts of Justice Act, as set out in section 8 of the bill, be amended by striking out "of the Family Court" in the fifth line and substituting "referred to in clauses (1)(d) and (e)."

This section is being amended to make it clear that incumbent members of the Unified Family Court have the right to remain as supernumerary judges of the new Family Court. It's basically of a technical nature.

The Chair: Discussion? Seeing none, all in favour of the motion? Opposed? That carries.

Shall section 8 carry, as amended? Carried.

There are no amendments to sections 9, 10, 11 or 12. Is there any discussion on any of those?

Shall sections 9 through 12 carry? Carried.

There's an amendment to section 13.

Mr Winninger: I move that section 13 of the bill be struck out and the following substituted:

"Deputy Judges Council

"33(1) A council known as the Deputy Judges Council in English and as Conseil des juges suppléants in French is established.

"Composition

"(2) The Deputy Judges Council is composed of,

"(a) the Chief Justice of the Ontario Court, or another judge of the General Division designated by the Chief Justice;

"(b) a regional senior judge of the General Division, appointed by the Chief Justice;

"(c) a judge of the General Division, appointed by the Chief Justice;

"(d) a provincial judge who was assigned to the provincial court (civil division) immediately before September 1, 1990, or a deputy judge, appointed by the Chief Justice.

"(e) three persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

"Criteria

"(3) In the appointment of members under clause (2)(e), the importance of reflecting, in the composition of the council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

"Chair

"(4) The Chief Justice of the Ontario Court, or his or her designate, shall chair the meetings of the Deputy Judges Council.

"Same

"(5) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

"Functions

"(6) The functions of the Deputy Judges Council are,

"(a) to review and approve standards of conduct for deputy judges as established by the Chief Justice;

"(b) to review and approve a plan for the continuing education of deputy judges as established by the Chief Justice; and

"(c) to make recommendations on matters affecting deputy judges.

"Complaint

"33.1(1) A person may make a complaint alleging misconduct by a deputy judge, by writing to the judge of the General Division designated by the regional senior judge in the region where the deputy judge sits.

"Dismissal

"(2) The judge shall review the complaint and may dismiss it without further investigation if, in his or her opinion, it falls outside the jurisdiction of the regional senior judge, is frivolous or an abuse of process, or concerns a minor matter to which an appropriate response has already been given.

"Notice of dismissal

"(3) The judge shall notify the regional senior judge, the complainant and the deputy judge in writing of a dismissal under subsection (3), giving brief reasons for it.

"Committee

"(4) If the complaint is not dismissed, the judge shall refer it to a committee consisting of three persons chosen by the regional senior judge.

"Same

"(5) The three persons shall be a judge of the General Division, a deputy judge and a person who is neither a judge nor a lawyer, all of whom reside or work in the region where the deputy judge who is the subject of the complaint sits.

"Investigation

"(6) The committee shall investigate the complaint in the manner it considers appropriate, and the complainant and deputy judge shall be given an opportunity to make representations to the committee, in writing or, at the committee's option, orally.

"Recommendation

"(7) The committee shall make a report to the regional senior judge, recommending a disposition in accordance with subsections (8), (9) and (10).

"Disposition

"(8) The regional senior judge may dismiss a complaint, with or without a finding that it is unfounded, or, if he or she concludes that the deputy judge's conduct presents grounds for imposing a sanction, may,

"(a) warn the deputy judge;

"(b) reprimand the deputy judge;

"(c) order the deputy judge to apologize to the complainant or to any other person;

"(d) order that the deputy judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a deputy judge;

"(e) suspend the deputy judge for a period up to thirty days;

"(f) inform the deputy judge that his or her appointment will not be renewed under subsection 32(2);

"(g) direct that no judicial duties or only specified judicial duties be assigned to the deputy judge; or

"(h) remove the deputy judge from office.

"Same

"(9) The regional senior judge may adopt any combination of the dispositions set out in clauses (8)(a) to (g).

"Disability

"(10) If the regional senior judge finds that the deputy judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the regional senior judge shall order that the deputy judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

"Application of subsection (10)

"(11) Subsection (10) applies if,

"(a) the effect of the disability on the deputy judge's performance of the essential duties of the office was a

factor in the complaint; and

"(b) the regional senior judge dismisses a complaint or makes a disposition under clauses (8)(a), (b), (c), (d), (e) or (g).

"Undue hardship

"(12) Subsection (10) does not apply if the regional senior judge is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and the health and safety requirements, if any.

"Opportunity to participate

"(13) The regional senior judge shall not make an order under subsection (10) against a person without ensuring that the person has had an opportunity to participate and make submissions.

"Crown bound

"(14) An order made under subsection (10) binds the crown.

"Compensation

"(15) The regional senior judge shall consider whether the deputy judge should be compensated for all or part of his or her costs for legal services incurred in connection with all the steps taken under this section in relation to the complaint.

"Recommendation

"(16) If the regional senior judge is of the opinion that the deputy judge should be compensated, he or she may make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

"Same

"(17) If the complaint is dismissed with a finding that it is unfounded, the regional senior judge shall recommend to the Attorney General that the deputy judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

"Maximum

"(18) The amount of compensation recommended under subsection (16) or (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar legal services.

"Payment

"(19) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

"Non-application of SPPA

"(20) The Statutory Powers Procedure Act does not apply to a judge, regional senior judge or member of a committee acting under this section.

"Personal liability

"(21) No action or other proceeding for damages shall be instituted against a judge, regional senior judge or member of a committee for any act done in good faith in the execution or intended execution of the person's duty under this section."

1600

The Chair: Discussion or comments on the motion?

Mr Charles Harnick (Willowdale): I'm still somewhat concerned that there's an element of going overboard with respect to the way we deal with deputy judges of the Small Claims Court. It seems to me that if you stopped after you got through the review by the judge of the General Division as set out in subsection 33.1(1) and gave that individual the jurisdiction to deal with all complaints to a deputy judge, you'd have much the same situation that you now have. I don't think it's been demonstrated that you really have to go further in this area than what we have at present, simply because we're dealing with a very different situation from situations of provincial court judges or judges of the Provincial Division, as they're now known.

We're dealing with judges who are effectively volunteers; they're deputy judges. We're also dealing with a large number of cases where there is no reporter in the courtroom because of the monetary value of the case. Although you've set up an intermediate step by permitting a judge of the General Division designated by the regional senior judge to deal with these complaints as far as an initial dismissal is concerned, I think you're going overboard by referring this on to a committee in such a formal process if that initial complaint is not dismissed.

There has been no demonstrated need for any such procedure, particularly because, as I said, so many of the cases dealing in the Small Claims Court are cases where the evidence is not transcribed, there is no reporter; the monetary value of the case is such that you don't have to have a reporter. I just wanted to put those remarks on the record.

The Chair: Further responses? Seeing none, all in favour of this motion? Opposed? That carries.

Shall section 13, as amended, carry? That carries.

Any comments on sections 14 and 15? Seeing none, shall sections 14 and 15 carry? Carried.

Section 16.

Mr Winninger: I move that section 43 of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out subsection (4) and by adding the following subsections:

"Chair

"(6.1) The Attorney General shall designate one of the members to chair the committee for a three-year term.

"Term of office

"(6.2) The same person may serve as chair for two or more terms."

The Chair: Debate on this motion?

Mr Harnick: Tell me where this section fits in. Am I looking at subsection 43(4), which in the bill before us says, "The Attorney General shall designate one of the members to chair the committee"?

Mr Winninger: We're dealing with the chair of the Judicial Appointments Advisory Committee.

Mr Harnick: That's described as subsection 43(4)? Am I right about that?

Mr Winninger: Yes, it is.

Mr Harnick: You're getting rid of subsection (4), so

the preceding section will be subsection 43(3), which is entitled "Criteria." Am I right?

Mr Winninger: Yes.

Mr Harnick: And then you'll go from (3) and the next number will be 43(6.1)?

Mr Winninger: Well, we're deleting (4) and then (5) will, I presume, take the place of (4) in the numerical order. Then you'll have (6) becoming (5); (6.1) will become an additional section. Maybe we could hear from legislative counsel on this.

Mr Harnick: Yes. It seems to me, if that's the numbering, you've got to do more amending than you've done.

Ms Cornelia Schuh: The intention is to strike out subsection (4) as now numbered and to put in two new subsections that will go in after the one currently numbered (6).

Mr Harnick: So you're going to go subsection (1), subsection (2), subsection (3), and then you're going to go to subsection (5), subsection (6).

Ms Schuh: In the reprint that will appear after this committee finishes its work, the numbering will be (1), (2), (3), (5), (6), (6.1), (6.2), (7) and so on. We do a complete renumbering after third reading because it's too confusing with multiple committee stages. The decimal points, (6.1) and (6.2), are to indicate where between the existing subsections the new ones are to be inserted.

Mr Harnick: It doesn't make any sense to me at all. You're getting rid of (4), you're keeping (5), you're keeping (6), and then this becomes (6.1) and (6.2). I understand that.

Ms Schuh: Those numbers are really just indications of where they go in the sequence.

Mr Harnick: But what you're telling me is that ultimately everything's going to move up, so what's now (6) becomes (5)?

Ms Schuh: It will ultimately, yes.

Mr Harnick: So that really this is (5.1) and (5.2), and (5) becomes (4).

Ms Schuh: Ultimately these will be numbered (6) and (7).

Mr Harnick: Okay. It doesn't make any sense to me.

Ms Schuh: We've found that because of repeated committee stages it's less confusing for users of printed bills if we do not renumber until the final stage. I agree with you that it is confusing.

Mr Harnick: It's not just confusing, but it seems to me that it might even be improper, because if we're here voting on a particular number and we are making a particular number part of the bill, as part of that numbered clause, how can you later change it when we've amended it as a different number altogether? How can (6) become (5)?

Ms Schuh: It's always been part of the editorial function of legislative counsel working for the assembly that we do necessary renumbering as part of the printing process.

The Chair: Anything further? Okay.

All in favour of the motion? Opposed? That carries.

Next amendment, section 16, subsection 43(10).

1610

Mr Winninger: I move that subsection 43(10) of the Courts of Justice Act, as set out in section 16 of the bill, be struck out and the following substituted:

“Recommendation by Attorney General

“(10) The Attorney General shall recommend to the Lieutenant Governor in Council for appointment to fill a judicial vacancy only a candidate who has been recommended for that vacancy by the committee under this section.”

The Chair: Discussion? Seeing none, all in favour? Opposed? That carries.

Section 16 of the bill, subsection 45(2).

Mr Winninger: I move that subsection 45(2) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out “that those needs be accommodated” in the fifth and sixth lines and substituting “that the judge’s needs be accommodated to the extent necessary to enable him or her to perform those duties.”

The Chair: Discussion? All in favour of the motion? Opposed? That carries.

Section 16, clause 49(2)(e).

Mr Winninger: I move that clause 49(2)(e) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by inserting after “law society” in the third line “who is a lawyer.”

The Chair: Discussion? All in favour of the motion? Opposed? That carries.

Mr David Tilson (Dufferin-Peel): Mr Chairman, I’m sorry, I just arrived. My question is to Mr Winninger, or whoever. There were some issues raised by some delegations about what a lawyer is. Has that been resolved in the package of amendments? Have you dealt with that?

Mr Winninger: Yes. I think we’ve resolved the question in that a lawyer is one who is a member of the law society and is not retired.

Mr Harnick: Is that definition in the Courts of Justice Act or the Interpretation Act?

Mr Winninger: I don’t think you’ll find it defined in the Courts of Justice Act. It’s the position we take that that’s what constitutes a lawyer.

Mr Tilson: Is that mentioned in the bill, as to what a lawyer is? That question was left up in the air, particularly about people who may not have been called or may have been professors and may not actually be members of the Law Society of Upper Canada, or other examples. I think it was a judicial group that was here, though I can’t remember their names.

Mr Winninger: I recall that discussion too. If a law professor, for example, duly qualifies as a member of the law society, he or she would be treated as a lawyer for the purposes of this act.

Mr Harnick: But which law society?

Mr Tilson: The Law Society of Upper Canada.

Mr Harnick: It doesn’t say that. What if you’re a lawyer in New York?

Mr Tilson: I think the point that was made is, do you have to be a member of the Law Society of Upper Canada to be a lawyer for the purposes of this bill?

Mr Winninger: The ambiguity would arise that if you didn’t have a requirement that you’re a member of the Law Society of Upper Canada, what would then distinguish you, necessarily, from a member of the lay public? You’re not a member of the law society; it’s true you may have a legal education, but there’d be very little to distinguish you from a member of the lay public, and in order to achieve that important balance between lay representation, lawyers and judges, it’s thought we should qualify the lawyers in that way.

Mr Tilson: I suspect that you and the staff have spent much more time on this issue than I have, but the question still remains in my mind that conceivably there could be someone—Mr Harnick has raised an example—who might be a lawyer in another jurisdiction, another provincial jurisdiction, an American jurisdiction, or someone who has obtained a law degree from a Canadian university or a Canadian law school, who may be perfectly qualified to be on the council. I’m not arguing that one way or the other. I just want to know the rationale, your rationale or the staff’s rationale, on that issue that was raised by that delegation. They did put forward, I thought, a very good point.

Mr Winninger: I think you know that in the context of this section it’s important that we define “bencher” as a benchner who is a lawyer, because there are benchers who are not lawyers, and if we want to ensure we have the right balance of representation on the committee, we need to refine our definition of “bencher.” That’s why we say “a benchner who is a lawyer.” That’s the context there.

Mr Tilson: Could you just give me one second, Mr Chair?

The Chair: Do you want to stand it down for a few moments?

Mr Tilson: No. It may well be that there wasn’t enough justification to deal with it. I’m just trying to respond to the issue that was raised. The word “lawyer” is referred to throughout the legislation—and I know I’m getting off the amendment. For example, in (f), “a lawyer who is not a benchner” just twigged the recollection of that submission made to the committee, and I had hoped that someone would have addressed that issue. But it may well be that you felt that it didn’t warrant it, and that’s your decision.

Mr Winninger: Just in brief response, as we move towards plainer language in our statutes, some of these issues may arise. I understand it’s the position of legislative counsel that this is a matter of plain language and that’s why the word “lawyer” is used.

Mr Tilson: So from your perspective, Mr Winninger, or the staff’s position, a “lawyer” is a member of the Law Society of Upper Canada?

Mr Winninger: Yes.

Mr Tilson: And that would rule out a lawyer from another jurisdiction who may not be a lawyer in Ontario, or someone who has obtained a legal education, perhaps a law professor, who is not a member of the Law Society

of Upper Canada, or someone who has gone through the three years and possibly even articling and is not a lawyer.

Mr Robert Chiarelli (Ottawa West): Or one of the thousands who hasn't paid his fees.

Mr Tilson: Yes. Those people are simply not a lawyer for the purposes of this legislation. That's what you're saying?

Mr Winninger: That's the correct interpretation.

Mr Harnick: Dealing with clause (2)(f), where it says, "a lawyer who is not a bencher of the Law Society of Upper Canada, appointed by the Law Society," what I wonder is, do you envision that that lawyer who will be part of the Judicial Council will be a lawyer possibly from outside of the Ontario jurisdiction?

Mr Winninger: I'm sorry. Just in the way you posed that question, I thought I understood you to say, would there be a lawyer possibly from outside of Ontario's jurisdiction serving as a lawyer on that council? If you were saying as a layperson—

Mr Harnick: No, I'm saying as a lawyer. I mean, I can be a lawyer in Manitoba and qualify to be a lawyer who is not a bencher of the Law Society of Upper Canada. The Law Society of Upper Canada can go ahead and appoint a lawyer who practises in Manitoba to be on that committee and qualify with the wording in (2)(f). I don't think that would happen, practically speaking, but it is rather imprecise language. You might want to say, "A lawyer practising in the province of Ontario who is not a bencher," "qualified to practise in the province of Ontario," "called to the bar in the province of Ontario."

1620

Mr Winninger: I've just confirmed with the staff here. A lawyer who may be qualified outside of the province of Ontario but is not a member of the Law Society of Upper Canada would not be treated as a lawyer for the purpose of this section.

Mr Harnick: That's not what it says, though.

Mr Tilson: You haven't defined what a lawyer is.

Mr Harnick: I don't think there's a whole lot to worry about here, because it's going to be an appointment made by the law society, as opposed to an appointment made by the government.

Mr Chiarelli: You never know. They've been known to import people from Manitoba before.

Mr Tilson: Indeed.

The Chair: Mr Harnick was raising a question still. I thought the three of you were conferring and might have another reaction to his comments. Is there one?

Mr Winninger: I don't know that I can respond, other than by restating our position. You may well be a lawyer qualified to practise in another province or who's received a diploma in another province but hasn't joined the Law Society of Upper Canada. That lawyer would not be embraced under this particular section.

Mr Harnick: That's what you say, but that's not what the section says. That's what you'd like it to mean, but it doesn't necessarily have to be interpreted that way, because there are no definitions.

Mr Winninger: As you well know, we have a Law Society Act that prescribes who may practise law, and without going into very convoluted language, the "lawyer" suggests, I would say, both to laypeople and professionals, that this is someone who is duly qualified to practise law under the Law Society of Upper Canada act.

The Chair: Do you have some suggestions about what you think should be there?

Mr Harnick: If that's the intention, and I'm sure it is the intention, I just think it might be advisable to say that it has to be a lawyer recognized by the Law Society of Upper Canada or called to the bar in Ontario.

Mr Winninger: Maybe I can short-circuit this process. If you wish to ask for unanimous consent to reopen section 1 so that we can add a definition of "lawyer" along the lines that you suggest, "A lawyer shall be someone who is qualified to practise law," or "a member of the Law Society of Upper Canada," we can do that. That's not a problem, if you still have difficulty with it.

Mr Harnick: I don't have difficulty with it. I just think if you want to be perfectly clear and you want it to mean what you're telling me it means, you should do something, but it's up to you.

Mr Tilson: I didn't mean to raise all this. Mr Winninger has probably defined the issue that I thought. My understanding is you can't call yourself a lawyer, for a starter, because you could be fined, under the Solicitors Act, is it? I forget what the legislation is. If you call yourself a lawyer, there's a provincial offence. Presumably, that's what you're relying on.

My sole question dealt with what a lawyer was for the purposes of this legislation, and you have clarified that, that what everyone thinks is a lawyer—in other words, a practising lawyer who calls himself a lawyer—is the intent of this legislation. That's what you're saying, just thank you very much to the people who made the presentation, but you feel that's the way the definition should stand? Thank you.

Mr Winninger: So is that can of worms now closed?

Mr Harnick: I think it's up to you. Certainly if you want to add a definition of "lawyer," I don't think we would be in a position to say that we don't consent.

Mr Winninger: We don't. I guess I was throwing the onus in your direction if you still had difficulty with it. We don't have difficulty with it.

The Chair: All in favour of this motion? Opposed? That carries.

Section 16 of the bill, subsection 49(4.1).

Mr Winninger: I move that section 49 of the Courts of Justice Act, as set out in section 16 of the bill, be amended by adding the following subsection:

"Term of office

"(4.1) The regional senior judge who is appointed under clause (2)(c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge."

The Chair: Discussion? All in favour of this motion? Opposed? That carries.

Section 16 of the bill, subsection 49(13).

Mr Winner: I move that subsection 49(13) of the Courts of Justice Act, as set out in section 16 of the bill, be struck out and the following substituted:

"Review panels

"(13) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4(17) or (18) or subsection 51.5(8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose."

The Chair: Discussion? All in favour of this motion? Opposed? That carries.

Clause 49(18)(b).

Mr Winner: I move that clause 49(18)(b) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out "or in consideration of the question of compensation under section 51.7."

The Chair: Discussion? All in favour of the motion? Opposed? That carries.

Section 16, subsection 49(19).

Mr Winner: I move that subsection 49(19) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out "or in consideration of the question of compensation under section 51.7" in the last three lines.

The Chair: Discussion? All in favour of the motion? Opposed? That carries.

Subsection 51.1(1).

Mr Winner: I move that subsection 51.1(1) of the Courts of Justice Act, as set out in section 16 of the bill, be struck out and the following substituted:

"Rules

"51.1(1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

"1. Guidelines and rules of procedure for the purpose of section 45.

"2. Guidelines and rules of procedure for the purpose of subsection 51.4(21).

"3. Guidelines and rules of procedure for the purpose of subsection 51.4(22).

"4. If applicable, criteria for the purpose of subsection 51.5(2).

"5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5(11).

"6. Rules of procedure for the purpose of subsection 51.6(3).

"7. Criteria for the purpose of subsection 51.6(7).

"8. Criteria for the purpose of subsection 51.6(8).

"9. Criteria for the purpose of subsection 51.6(10)."

1630

The Chair: Discussion? All in favour? Opposed? That carries.

Subsections 51.2(5) and (6).

Mr Winner: I move that section 51.2 of the

Courts of Justice Act, as set out in section 16 of the bill, be amended by adding the following subsections:

"Bilingual hearing or mediation

"(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the council is of the opinion that it can be properly conducted in that manner.

"Part of hearing or mediation

"(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

"Same

"(7) In a bilingual hearing or mediation,

"(a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;

"(b) documents may be filed in either language;

"(c) in the case of a mediation, discussions may take place in either language;

"(d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

"Same

"(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language."

The Chair: Discussion? All in favour? Opposed? That carries.

Subsections 51.5(10.1) and (10.2).

Mr Winner: I move that section 51.5 of the Courts of Justice Act, as set out in section 16 of the bill, be amended by adding the following subsections:

"Non-application of SPPA

"(10.1) The Statutory Powers Procedure Act does not apply to the Judicial Council's activities under subsections (8) and (10).

"Notice to judge and complainant

"(10.2) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal."

The Chair: Discussion? All in favour? Opposed? That carries.

Subsection 51.7(1).

Mr Winner: I move that subsection 51.7(1) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out "all or part of" in the fourth line.

The Chair: Discussion? All in favour? Opposed? That carries.

Subsection 51.7(5).

Mr Winner: I move that subsection 51.7(5) of the Courts of Justice Act, as set out in section 16 of the bill, be amended by striking out "If the complaint is dismissed

with a finding that it is unfounded" in the first two lines and substituting "If the complaint is dismissed after a hearing."

The Chair: All in favour? Opposed? That carries.

Subsection 51.7(7).

Mr Winninger: I move that subsection 51.7(7) of the Courts of Justice Act, as set out in section 16 of the bill, be struck out and the following substituted:

"Amount of compensation

"(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services."

Mr Harnick: I'm unclear as to the meaning of subsection (7), because subsection (7) states that, "The amount of compensation recommended under subsection (4) or (5) may relate to all" of the judge's costs "or part of the judge's costs," and then it goes on to say, "and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario."

What is the maximum rate for similar services from the government of Ontario? Does the government of Ontario traditionally see these kinds of cases so that they affix an hourly rate?

Mr Winninger: I'm advised by staff with me today that the average rate is \$225 an hour. That's a tariff that applies virtually across the board.

Mr Harnick: So if you hire a lawyer who charges you \$300 an hour, they might pay all of it or they might only pay up to the \$225.

Mr Winninger: I'm again advised by staff that normally a lawyer agreeing to work for a judge in these proceedings would be inclined to cut his or her hourly rate and accept the rate normally paid of \$225 an hour.

Mr Tilson: I think the point that we're trying to raise is that this is obviously a serious matter, and the judge may want to retain the best counsel—

Mr Harnick: It's his career on the line.

Mr Tilson: That's right. He's finished if he doesn't get proper legal advice. He's finished if he doesn't—I hate that smile, but however—get proper legal counsel. He may wish to retain the best counsel in the province—or in the land, for that matter.

Mr Winninger: I'm going to allow staff to add to this, but I'm advised that we get the best lawyers in Ontario for that rate.

Mr Tilson: That's a nice shot and you may be correct. All I'm saying is that the judge, to be fair to him or her, with serious allegations, may wish to retain the best counsel possible, and what this legislation is saying is that the difference would be borne by the judge personally.

Mr Winninger: I have with me Craig Perkins of the Ministry of the Attorney General, who should be no stranger to many of you, and perhaps he can add to what I've already said.

Mr Craig Perkins: We in the Ministry of the Attorney General and indeed across the government are able to negotiate with private lawyers, including those who are the very leaders of the profession, to provide services to the government at the Ontario government maximum tariff, and we would expect that a judge going into this situation would similarly bring it to the attention of counsel that there is a maximum and counsel would take the brief on that basis, that there was a maximum.

It's always possible, I suppose, that counsel would expect a premium and ask that the judge pay a portion of that personally and then the judge would have to make a decision on whether that counsel was the appropriate counsel on the case.

1640

The Chair: All in favour? Opposed? That carries.

Subsection 51.8(5).

Mr Winninger: I move that subsection 51.8(5) of the Courts of Justice Act, as set out in section 16 of the bill, be struck out and the following substituted:

"Transition

"(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the Courts of Justice Statute Law Amendment Act, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this act as it read immediately before that day."

The Chair: All in favour? Opposed? That carries.

Subsection 51.11.1.

Mr Winninger: I move that section 16 of the bill be amended by adding the following as section 51.11.1 of the Courts of Justice Act:

"Consultation

"51.11.1 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Judge of the Provincial Division shall consult with judges of that division and with such other persons as he or she considers appropriate."

The Chair: Discussion? All in favour? Opposed? That carries.

Shall section 16 carry, as amended? All in favour? Opposed? That carries.

All in favour of section 17? Opposed? That carries.

Section 18: There's an amendment here, subsections 18(3) to (6).

Mr Winninger: I move that subsections 18(3) to (6) of the bill be struck out and the following substituted:

"(3) Clauses 53(1)(b) and (c) of the act are repealed."

The Chair: Discussion? All in favour? Opposed? That carries.

Subsection 18(9).

Mr Winninger: I move that subsection 18(9) of the bill be struck out and the following substituted:

"(9) Subsection 53(3) of the act is repealed."

The Chair: All in favour? Opposed? That carries. Shall section 18 carry, as amended? That carries. Section 19, any discussion?

Mr Tilson: Yes, section 19, what does part 3 say?

Mr Winninger: We're replacing there the Unified Family Court part of the statute with reference to the Family Court division of the general court.

Mr Tilson: Mr Winninger, there's a question that's been asked by Mr Chiarelli and Mr Harnick and myself and several others, particularly in the House, and that is that there's going to be a substantial saving of moneys—at least, we're submitting that there will be—with respect to the salaries that will be paid federally.

The issue is that the concern was that those savings will be put into the court system or somewhere in the court system for all kinds of things, as opposed to the consolidated revenue fund. There may not be a place in this bill to deal with that, but that's an issue that remains unanswered. You may not be in a position to answer it now, but hopefully before these committee hearings end you'll have had a discussion with the Attorney General to provide an answer to that question.

Mr Winninger: As you may know, Mr Tilson, this is a bipartite process, if I can put it that way, and discussions have been ongoing for some time between our own deputy minister and the federal deputy with the view to determining how many appointments there will be to the expanded family division, where these appointments will be, and, at the same time, determining what resources can then be used to improve the infrastructure that will support those particular judges.

Mr Tilson: I'm aware of that. My question is a simple question: Where are the savings going? Because there will be savings to the province of Ontario.

Mr Winninger: Whatever savings are had as a result of the federal appointments we have undertaken to the federal government to redeploy back into the judicial system here in Ontario.

Mr Tilson: How do you propose to do that?

Mr Winninger: That's being worked out precisely in discussions between the federal and provincial levels of government.

Mr Tilson: Mr Winninger, I guess all I'm looking at is that whether it's the Advocates' Society or any other groups I've spoken to, that's a question that pops up periodically: Where is that money going? You can say you're having ongoing discussions with the federal government to the federal representatives, but the issue is, what's the province of Ontario going to do with those moneys? You may not have the answer now, and I understand that, but I would hope that before this committee rises—is that today?

Mr Winninger: Part of this is also going to be determined in consultation and with the advice of the judicial resource—

Mr Tilson: That doesn't mean anything. I'll let Mr Harnick go at this for a while.

Mr Winninger: The local resource committees, to use the exact language.

Mr Harnick: You see, Mr Winninger, part of the problem is that we now have a government that is so desperate for cash that it has sold the GO Transit rolling stock and leased it back. When a government becomes that desperate in the management of its resources, when it owns something that's paid for and sells it in order to get the cash and then it's prepared to lease back and make payments on what it originally owned and had paid for, it's very difficult for me to believe that when the federal government begins to pick up the costs of a number of the existing judges who will be transferred from the Provincial Division to the family division, the Treasurer of this province, Mr Laughren, will continue to pay the moneys that he has been allocating, budgetwise, for judges' salaries, because those costs will have gone down.

Our concern is, by virtue of the judges now being paid by the federal government—we don't know how many it is, granted—we would like assurances that the budget for justice will not be cut by the amount that is being saved by not having to pay these judges. It has nothing to do with resource committees; it seems to me there has to be a commitment there by the Treasurer to maintain the level of funding that he now provides to the justice department.

1650

Mr Winninger: I'm actually surprised that you would raise this line of questioning, because it was only a few years ago, after the Askov decision, when we found ourselves with an acute backlog in the courts of Ontario, that we took resources, during very difficult fiscal and economic times, and used them to hire additional judges—as I recall, upwards of 30 additional judges—hired additional crown attorneys, hired the necessary support staff and dealt very effectively with that backlog and reduced it to manageable proportions that were in keeping with the eight-month rule, I think it was, under the Askov decision.

So if we were able to do that then, and you've heard just a few minutes ago that we, as a province, have undertaken to the federal government to redeploy those savings back into the judicial system, I really can't understand why you would be concerned that this money might somehow find its way into the consolidated revenue fund.

Mr Harnick: The reason that I'm concerned is because following second reading I had an opportunity to speak to the deputy minister, and the deputy minister expressed some gratitude that we raised that issue because he felt it would make his job somewhat easier, when they set the budgets to appear before the Treasurer, to maintain the levels of funding.

Really, all we're doing is asking for some assurance and putting it on the record to hopefully help the situation. We're not being adversarial; we want to make sure that the moneys that we save can go to these resource committees and that the Treasurer won't merely say: "You know, we don't have that many judges now; we've got 20 fewer judges that we're paying for. At \$120,000 a year, that's \$2.4 million that I don't have to give the justice department." All we're trying to do is make it

easier for you to ensure that, when you go to the Treasurer, it's been noted on the record that we don't want him picking the pockets of the justice department.

Mr Winninger: Well, we'd like to thank you for that reminder.

Mr Chiarelli: I think it's a very valid point to raise, but I'm very surprised that the Conservatives are raising it, because my understanding is that this part of government spending is not included in the exempt or protected area of the Common Sense Revolution. I would have expected you to be saying, "Would you give us assurances that this saving would be applied to the provincial debt?" So I guess it's a valid point to be raising, but I guess if you consider the source, it raises some confusion.

Mr Harnick: It's now on the record and I'm entitled to respond to it.

The Chair: This is very true. I did want to finish this by today, because we are scheduled to do other things for next week, but go ahead.

Mr Harnick: I understand. Mr Chiarelli has quite obviously not read the document. The document lays out specifically where the savings are going to be, and in so far as the justice ministry is concerned, there will be a reduction in the amount of legal aid spending, and that's spelled out clearly in the document.

I think if Mr Chiarelli wants to get involved with costs that a government wasted in terms of the way they managed resources, we can talk about Askov and we can talk about the warning that his former Attorney General was given by the courts and was absolutely ignored; it was laughed off. Then when the courts decided that they were going to call Mr Scott's bluff and the bluff of the former Liberal government, it ended up costing the justice ministry some \$50 million or more to rectify the problem that Mr Scott was given several years to work at. If we're going to talk about a waste of money, Mr Chiarelli, I think that people who live in glass houses should not throw stones.

Mr Chiarelli: I was agreeing with your point. I was just commenting on the source.

Mr Harnick: If you want to comment and be accurate, you should read the document, because what you purport to say the document means indicates you haven't read it.

The Chair: All right, moving on. All in favour of section 19? Opposed? That carries.

Section 20.

Mr Winninger: We have no amendments till section 34.

The Chair: I know. We'll go quickly through. I just want to give the members an opportunity in case they see something they want to comment on.

Section 20: All in favour? Opposed? That carries.

Section 21: All in favour? Opposed? That carries.

Section 22: All in favour? Opposed? That carries.

Mr Tilson: Why not go from 22 to 33?

The Chair: Shall sections 23 to 33 carry? Carried.

Section 34: Mr Winninger with a motion.

Mr Winninger: I move that section 87 of the Courts of Justice Act, as set out in section 34 of the bill, be amended by adding the following subsection:

"Compensation

"(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the schedule to this act."

Mr Harnick: This is a very good opportunity for me to put on the record the issue dealing with masters. It's interesting that masters are dealt with in terms of receiving the same salaries, pension benefits etc, which I think is quite proper. I think that, as well, the government is making a major mistake in continuing the Liberal policy of phasing out masters to deal with interlocutory matters in the jurisdiction of Metropolitan Toronto. Masters have played an integral role in dealing with interlocutory matters in Metropolitan Toronto, and they have also played an integral role in the education of law students who appear before masters to deal with pre-trial motions that are within the jurisdiction of the masters.

In the jurisdiction of Metropolitan Toronto, masters have also been charged with the jurisdiction of trying construction lien cases, and we know that those cases are often long and complicated and involve voluminous documents. Masters deal with references that are referred to them by judges and perform a very valuable service in a jurisdiction that is really wanting for resources. I think the idea of getting rid of masters is a very grave mistake that the NDP government is making. I think they're blindly following what the former Liberal government started to do.

I had the pleasure last week of appearing in masters' chambers at 145 Queen Street, and I took it upon myself to count the number of matters that masters were dealing with on this particular day. I can tell you they were in excess of 100 matters. I don't know who will perform the function that the masters are now performing, but there are 100 or more items every day, not including construction lien trials, that the masters are dealing with. The judges of the merged court—another Liberal failure and a misguided direction, which unfortunately the NDP government was not able to stop because it had already been completed—but I don't know who on that single-level court is available to look after these interlocutory matters.

1700

I've had the opportunity of asking the Attorney General about this on occasion and I haven't been given any kind of definitive answer other than the fact that "We're studying the situation." In the meantime, while the situation is being studied, the morale of the masters, who perform the very vital functions that I've pointed out—one in particular is the education of law students before the courts—becomes lower and lower at every turn. As a master retires, that particular master is not replaced. The workload and the resources they have available to them ultimately will become insurmountable and that aspect of the system will fail.

I think it's very regrettable that the government sits idly by and watches this happen and cannot act and make

a decision. I would strongly recommend to the people running the ministry of justice that they reconsider the issue of masters. Instead of tearing down an institution that has worked and can continue to work and perform a very vital function, they should be building upon it. I think they would be well advised to consider that.

Mr Winninger: I certainly appreciate the concerns expressed by the member for Willowdale, but I think I might say for the record that outside of Toronto, which has a number of masters, outside of Ottawa and Windsor, which I believe each still have one master, and formerly London had a master as well until Mr Justice Brown went to his reward as a judge of the General Division, but outside of those particular jurisdictions, across Ontario judges, for many, many years, have been making decisions in regard to interlocutory matters.

I believe that masters first started hearing such cases in 1869, but throughout that period of time where masters haven't sat, it's been judges who have made those interlocutory decisions. I'm pleased to say, and perhaps the member knows, that there is a Civil Justice Review Committee, chaired, I believe, by Mr Justice Blair, that is looking at the role of alternative dispute resolution and the intervention of subordinate justice officials in resolving many of these interlocutory matters. This is something that's being studied on an ongoing basis and hopefully will meet the need that the member for Willowdale addresses.

The Chair: Okay. All in favour of this motion? Opposed? That carries.

Shall section 34 carry, as amended? That carries.

Then we have section 35 to section 52.

Mr Harnick: What about your amendment to section 48?

The Chair: Is there another amendment somewhere else?

Mr Harnick: Do you not have an amendment at section 48?

The Chair: Hold on. Yes, we do. All right. Section 48—that's right—of the bill, schedule to the Courts of Justice Act. We'll go up to section 47 then. Sections 35 to 47, any suggestions, any comments? If not, shall they carry? Carried.

Section 48.

Mr Winninger: I move that the French version of the schedule to the Courts of Justice Act, as set out in section 48 of the bill, be amended by striking out "The Ontario Judges Association" and "The Ontario Family Law Judges Association" in the 12th and 13th lines and substituting "L'association des juges de l'Ontario" and "L'association ontarienne des juges du droit de la famille" respectively.

The Chair: Shall the amendment carry? Carried.

Shall section 48 carry, as amended? That carries.

Section 49 to section 52: Any discussion on any one of those sections?

Shall sections 49 to 52 carry? Carried.

There's a new section. Mr Winninger, do you want to read that into the record?

Mr Winninger: Yes, I will. In reference to section 52.1 of the bill, I move that the bill be amended by adding the following section:

"52.1 Subsections 12(1) and (3) of the act are repealed and the following substituted:

"Inquiry

"(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the questions of whether there has been misconduct by a justice of the peace....

"Report

"(3) The report of the inquiry may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8, or that the review council implement a disposition under subsection (3.2).

"Same

"(3.1) The report may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry.

"Dispositions by review council

"(3.2) If the report recommends that the review council implement a disposition under this subsection, the council may,

"(a) warn the justice of the peace;

"(b) reprimand the justice of the peace;

"(c) order the justice of the peace to apologize to the complainant or to any other person;

"(d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

"(e) suspend the justice of the peace with pay, for any period, or;

"(f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days."

The Chair: We read it for the record but we discussed this with Mr Winninger and we said that the amendment is out of order because it seeks to amend a section of the act and the section has not already been opened up in the amending bill. So Mr Winninger may want to ask the other members whether or not they want to deal with this.

Mr Winninger: I'm seeking unanimous consent to introduce this important amendment.

The Chair: Do we have agreement? There is agreement. All right then, Mr Winninger, anything further to add on that?

Mr Winninger: Unless someone wants an explanation of the section, I don't.

Mr Tilson: Just a minor question. We're spending some time on legal services with respect to judges. Should the same rationale apply to justices of the peace? I'm talking about tariff. I forget what the wording was.

Mr Harnick: The words that appear to be missing are "and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services."

Mr Winninger: I'm advised that the ministry certain-

ly has no problem with the addition of those words to bring it into line with what prevails with judges. The intent of this section was in fact to invoke that mechanism.
1710

Mr Harnick: That's the mechanism that was used for the deputy judges as well as the judges, so I suppose to be consistent it should be used with the JPs.

Mr Winninger: Perhaps we could enlist our legislative counsel. Do we need to write that out or can we simply deal with this orally?

Ms Schuh: I think it would be good to write it out. I think the neatest way of adding this information would be to plug in a new subsection, with the side note "Maximum."

Mr Tilson: The wording that was used for the judges, and you have the wording, should be added. It's a phrase of about five words.

Mr Harnick: It should say "for all or part of the justice of the peace's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services."

Mr Tilson: Why don't you just add those words?

Mr Winninger: Our suggestion was simply to add to the end of subsection (3.1) the following words: "and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services."

Mr Tilson: Fine.

The Chair: I was going to ask Mr Winninger to withdraw that particular section and re-read it, but he's already read it in for the record. If that's acceptable to everyone, we'll just leave it like that.

Mr Winninger: I thank the third party for drawing our attention to that.

Mr Tilson: Always prepared to help, Mr Chair.

Mr Winninger: I'm sure the justices of the peace will be very pleased as well.

The Chair: The legislative counsel has some concerns. Perhaps she and Mr Winninger, or others, can try to work out a language for that before we approve that section. But I think we can approve the other stuff.

Mr Tilson: What did you say? What's happening?

The Chair: We have deferred this matter for a few moments until these two lawyers confer on the appropriate language, and we'll return to it in a moment.

We'll skip over to section 53. Any comments on section 53? Shall section 53 carry? Carried.

We're moving on to section 54. Any comment on that? Shall section 54 carry? Carried.

Section 55: Any comments? Shall it carry? Carried.

Section 56: Shall that section carry? Carried.

Section 57: Shall it carry? Carried.

Section 58: Shall it carry? Carried.

Still working on the language, I presume, yes?

Mr Winninger: Yes, we are.

The Chair: All right, we'll have to pause for a few seconds until we get that. Do you want to read that into the record, Mr Winninger?

Mr Winninger: Yes, it would be a new subsection that would immediately follow subsection (3.1) in section 52.1, and that subsection would read as follows:

"(3.1.1) The amount of compensation recommended under subsection (3.1) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar legal services."

It's perhaps just a more elegant way of expressing what we discussed earlier.

The Chair: Shall section 52.1 of the bill, 12(1) and (3) carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Yes.

It's ordered that the Chair report Bill 136, An Act to amend the Courts of Justice Act and to make related amendments to the Freedom of Information and Protection of Privacy Act and the Justices of the Peace Act.

Mr Winninger: Could I just thank the opposition critics and members of the opposition, on behalf of the Attorney General, for their cooperation throughout this process. It has been very helpful and constructive.

The Chair: Very well. Any further comments? Seeing none, this committee is adjourned.

The committee adjourned at 1717.

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Substitutions present/ Membres remplaçants présents:

Wood, Len (Cochrane North/-Nord ND) for Mrs Harrington

Also taking part / Autres participants et participantes:

Ministry of the Attorney General:

Perkins, Craig, counsel

Winninger, David, parliamentary assistant to Attorney General

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Schuh, Cornelia, deputy chief legislative counsel

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Monday 6 June 1994



**Standing committee on
administration of justice**

Control of ammunition
and community-based
crime prevention initiatives

Chair: Rosario Marchese
Clerk: Donna Bryce

Journal des débats (Hansard)

Lundi 6 juin 1994

**Comité permanent de
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Contrôle des munitions
et des initiatives
pour la prévention de la criminalité
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STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 6 June 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 6 juin 1994

The committee met at 1601 in room 228.

CONTROL OF AMMUNITION
AND COMMUNITY-BASED CRIME
PREVENTION INITIATIVES

Consideration of a matter designated pursuant to standing order 108 relating to control of ammunition and community-based crime prevention initiatives.

KATHERINE SWINTON

The Chair (Mr Rosario Marchese): We have here University of Toronto faculty of law professor Katherine Swinton, with whom we will be beginning. Welcome.

Ms Katherine Swinton: Thank you for the invitation to appear before the standing committee. My area of academic expertise is Canadian constitutional law, so my remarks address Ontario's constitutional capacity to implement certain measures related to the sale of ammunition, and I would say much less the community-based crime prevention initiatives. I've really mostly talked about the sale of ammunition.

Even within the field of constitutional law, in 15 minutes, I'm going to be more specific than the whole Constitution. I'm going to focus mainly on the distribution of powers between the federal and provincial governments in the Constitution Act, 1867, rather than the Canadian Charter of Rights and Freedoms or aboriginal rights. Though arguments could be made with regard to the latter two areas, I think the big issue will be the distribution of powers. Let me begin with a little overview of the distribution of powers in general under the Canadian Constitution. My apologies if this is all very familiar.

Under the Constitution Act, 1867, the provincial legislatures and the federal Parliament are each given jurisdiction to enact certain laws with regard to certain classes of subjects. These powers are said to be exclusive; that is, neither can enact a law characterized as falling within the powers assigned to the other level of government.

In practical terms, there is often a great deal of overlap between federal and provincial regulatory activity despite this reference to exclusivity, as laws may have, to use the constitutional term, a "double aspect"; that is, they may have features that can bring them within both federal and provincial areas of jurisdiction.

Most important for your area of inquiry is the degree to which the federal jurisdiction to enact laws under the criminal law power will constrain Ontario.

Under section 91(27) of the Constitution Act, Parliament has the exclusive authority to enact laws with respect to "the criminal law, except the constitution of courts of criminal jurisdiction, but including the proce-

cedure in criminal matters." That I think will be the major area of discussion, though there is another possible area of concern which I will call the territorial constraint on provincial jurisdiction; that is, the degree to which the province can regulate matters that fall outside the territorial boundaries of Ontario. But let me focus on the criminal law power first.

This power allows the federal Parliament to enact the Criminal Code and measures like environmental regulations and consumer product standards. Generally, the courts find a law to be within that federal jurisdiction if it meets two tests: one, that it has the form of a criminal law, that is, it's got a prohibition and a penalty; and secondly, it has a criminal law purpose—public safety, public order, security, public health, to name a few.

The provinces do not have the power to enact criminal laws as such, although they do have the authority to enact a wide range of regulatory standards in the public interest. They also, as you no doubt know, have the power to attach penalties to validly enacted provincial laws under the Constitution.

Much of this legislation that is regulatory of areas of public interest falls within the power to legislate with regard to property and civil rights in the province under section 92(13) of our Constitution, but also provincial laws deal with the administration of justice and matters of a merely local or private nature in the province. Thus, provinces have successfully been able to pass laws dealing, to name a few examples, with film censorship, a short-term ban on all public demonstrations in Montreal, liquor control laws—obviously, in earlier times there were prohibition laws enacted by the provinces that were valid—and restrictions on nude dancing in establishments licensed under provincial liquor licensing laws.

In each case, the province's law was upheld by the Supreme Court of Canada on the basis that the province was regulating an area of business activity or a matter within provincial jurisdiction, not trying to trespass on the criminal law power by punishing antisocial or immoral conduct.

In the cases I've mentioned, not by name but by example, where the provincial laws were upheld, and in other cases where the provinces' laws were struck down under the Constitution, the courts have looked closely to see whether you could characterize the provincial law as a criminal law, the kind of law that the federal government should be enacting under its jurisdiction. I think it's fair to say, and I know my students would back me up on this, that drawing the line at times between the federal criminal law power and the provincial penal power or

regulatory power hasn't been easy to do. In some cases the provincial laws have been regarded as criminal law. Two recent examples: Calgary had a law which was struck down which tried to control street prostitution. By banning people from being on the streets for purposes of prostitution, that was held to be criminal law and therefore invalid. More recently, Nova Scotia tried to limit access to abortions by providing they could only be done in hospitals licensed under the licensing regime, and the Supreme Court of Canada last fall said that they could not do that, that they were trying to enact criminal law in relation to abortion, not merely regulating women's safety and health, which would be valid provincial concerns.

I repeat again, perhaps because I know my students say this, that finding the line between a valid provincial regulatory initiative and a criminal law hasn't been easy. When I try to generalize, I think I would say the following: The closer the law seems to be to the traditional areas of criminal law concern, the more vulnerable it looks. Prostitution and abortion look more like criminal laws, and the judicial antennae seem to come up when you see those of kinds of concerns by the provinces.

In addition, the more the province looks like it's trying to fill a perceived gap in the federal criminal regime, the more vulnerable the provincial law is under the Constitution. I'm not going to say it's automatically invalid, but as I say, there's a concern when you see the provinces moving into areas where the criminal law seems usually to be used and where there's debate about its efficacy.

Let me turn more specifically to your committee's concerns. I understand you want to talk about and examine the province's jurisdiction to deal with the sale and purchase of ammunition. It is difficult in the abstract to talk about what the province can do. As a constitutional lawyer I feel much more confident talking about jurisdiction when I have a piece of legislation or a fact situation to deal with, so I'm going to focus a little more directly on the proposed bill that you have before you.

I think there's a good argument that this proposed Bill 151 which I was given would be within the jurisdiction of the province, particularly if it were understood that it was directed to purchases and sales within the province of Ontario. The reason I say that is that a province has constitutional restrictions on its ability to legislate with regard to activities outside the provinces.

Sometimes the provinces can get into extraterritorial regulation, but again, the law starts to become more vulnerable, more open to challenges constitutionally when it tries to regulate purchase and sale outside the province. The way I read the bill, I think that on its face it would probably be interpreted to be dealing with purchase and sale in the province of Ontario. Let me talk about whether that's valid, and then I'll come back to whether you could do more.

1610

As I've said, the province has general authority to regulate businesses, including safety standards for them. What I think is interesting about your bill is that it doesn't purport to ban the sale of ammunition, nor does it have the effect of banning the sale of ammunition. Rather, I think the argument would be made that it

restricts the purchase to those who have a valid reason in law to have ammunition; that is, hunters who have a valid licence or those who have federal permission to acquire a gun because of a firearms acquisition certificate.

Thus, I think you can make the argument that the bill fits within this traditional regulatory framework, since it's trying to restrict access to a dangerous good in the province of Ontario, that is, ammunition, and ensure that it is purchased only by those who have a good reason for having it and some minimal, at least demonstrated competence in handling it safely.

I think you could make a good argument that this is regulating the sale of a dangerous product within the province and falls within that line of cases that has dealt with the regulation of dangerous products. While the analogy is not perfect, I will draw an analogy to the early cases dealing with liquor prohibition where the provinces had extensive jurisdiction, not only to control access to liquor but actually to prohibit its sales because liquor was regarded as a dangerous substance.

There is no doubt that some people would argue with my conclusion that this law could be upheld. I think the reason they would do that is twofold: One is because it's dealing with the sale of ammunition and the second is the fact that the form is prohibitory with a penalty attached in form; that is, you can make an argument it fits within traditional criminal law or that it looks like criminal law. It's got the prohibition on sales, it's got a penalty if you don't obey and it's dealing with ammunition. The argument would be that you're dealing with a traditional area of criminal law: gun control, protection of the public from the use of firearms.

I would assume that someone challenging this bill would say what you're trying to do is supplement the criminal law regime dealing with gun control by making it harder to use guns.

I always think there's some difficulty in predicting what the courts will do in this area, but I believe that the argument this law is invalid would have much more weight were your committee recommending that Ontario ban the purchase of ammunition or come close to a total ban. The closer you go towards that end of a regulatory spectrum, I think the more vulnerable the law would be. But the fact that you're sort of trying to fit this law into a regulation framework, both within the hunting regime in Ontario and the federal gun control legislation I think makes a much stronger argument that Ontario's regulating a retail business activity in Ontario rather than trying to get around the restrictions on the criminal law. I'm sure we'll explore that further in the question period.

Let me just raise a couple of more issues. A further issue raised, not in the bill itself so much but in the motion that I was given, is whether the province could regulate ammunition purchased outside the province and the country. Some might see this as a more problematic exercise of jurisdiction since the provinces can't regulate interprovincial and international trade and commerce under the Constitution. There have been a number of cases which have struck down provincial efforts to control entry of goods when that has been done for competitive purposes.

Again, I think Ontario would have a good legal argument for trying to control entry in this kind of case because I don't get any sense here that you're trying to enhance Ontario's position in the market for ammunition in any way for Ontario's retailers. I think what you're trying to do here is protect the public by controlling access to a dangerous substance. There certainly have been laws which have been upheld which control entry of products which are dangerous to people in the province, or even control extraprovincial activity because it has an impact in the province, an example being the securities area.

That said, that's sort of the legal response. As a step outside my legal role, there may well be very practical problems with Ontario trying to implement any kind of regime to control the purchase and sale of ammunition outside the province. I think we've witnessed with the cigarette purchase issue that it's very hard to control entry of these kinds of products at the border, particularly if other provinces aren't in a cooperative regime, so this may well be an area where you need the cooperation of the federal government or other provinces to have an effective regulatory regime.

I just flag that for you, but I will stop at this point.

There could be other constitutional issues to raise that I haven't addressed. One would be whether the current bill, for example, should be examined for its impact on aboriginal hunting rights. A second issue is whether the bill could be made more stringent in the kinds of sales it controlled, because the more stringent it becomes, the more it may run into what are called paramountcy problems with the federal regime; that is, conflicts between the federal and provincial laws. At this point, I don't think they are an issue, but they could be if you started to change the bills.

I'm going to stop there, and if I can be of help to you in a question-and-answer session, I'd be glad to do so.

Mr Robert Chiarelli (Ottawa West): I think you dealt very succinctly with the issue, and it will certainly be very helpful for us on the committee when we're looking at Bill 151.

You mentioned something about cooperation with the other provinces and the federal government with respect to outside-the-province controls of one type or another. What is the range of cooperation and actions that could be taken cooperatively with the other provinces and the federal government, in your opinion?

Ms Swinton: If the other provinces would pass similar legislation restricting access, it's going to be much more effective, because the danger of this kind of law where you're just regulating purchase and sale in Ontario is that someone could go to Manitoba or Quebec and do an end run on your legislation.

Mr Chiarelli: Are we talking about the enforceability of that provision or about the constitutionality when you say cooperation with the other provinces?

Ms Swinton: That's enforceability as much as anything. I suppose conceivably you could say, "No one shall bring ammunition into the province of Ontario," or at least no Ontario resident. Let's even say we did that

because we're trying to protect other residents from their fellow residents. You could put that on the books and you may be able to defend it constitutionally, but I don't know how you would really enforce it when you think how easy it would be to conceal ammunition in a car as you drove back and forth, let's say, to Manitoba. I admit I'm moving over towards sort of the practicalities of this.

Mr Robert W. Runciman (Leeds-Grenville): This doesn't deal with the constitutionality, but the legislation doesn't define "ammunition," and I'm wondering if from a legal perspective you see any problem with that. You could be looking at arrows and bolts for crossbows, BBs, pellets for pellet guns. Essentially, I'm wondering if the legislation, as written, is enforceable without some kind of definition of "ammunition." It's too broad in its scope.

Ms Swinton: With all due respect to whoever drafted this, there are ways I could see would make this a better law for purposes of enforcement and reliability, if you could do things like define "ammunition" and make it clear what the geographical reach of it is. To the extent you don't, you know that you're going to litigate it, that you're going to create uncertainty for the prosecution and so on. It makes it tougher for the police to enforce. It probably is a worthwhile exercise to say: "What is it we're trying to get at? Is it the crossbow or is it guns we're trying to get at?" So let's define guns and ammunition used for guns and deal with that. If you're really trying to make this a better law, I would suggest you might put both the definition sections in.

You'd want perhaps the definition of the Outdoors Card—I had to learn what that was—and so on. You'd want to put the firearms acquisition certificate as defined in the Criminal Code from time to time: those kinds of things that don't necessarily change the thrust of the bill but make it more enforceable.

1620

Mr Runciman: Yes, there are people who purchase ammunition who normally don't have an Outdoors Card or an FAC, necessarily; so I'm advised. We'd appreciate your input and any suggestions you feel might strengthen the legislation, as we will have an opportunity to perhaps move amendments during the course of the process.

I share your concern that doing this sort of thing in isolation will ensure that it's extremely difficult to do anything meaningful because of the easy movement of these kinds of products across provincial borders, let alone national borders. My own view is that if we're going to proceed, this should be a national program.

Ms Zanana L. Akande (St Andrew-St Patrick): Professor Swinton, can you expand on the practical problems that you've referred to in the first full sentence on page 7, please?

Ms Swinton: This is with regard to trying to control the bringing of ammunition into the province. When I tried to think about how you would do it, in many ways things like ammunition, like cigarettes, will cross borders just in cars. You've got to figure out, is there any way you can actually stop people's cars, realistically, along Ontario's borders and check for ammunition? If you can't, there's a problem. I must confess that I'm not an

expert in the use of the mails for transmitting ammunition, but you might want to ask as a committee, or if you have staff to do the research, if there are ways in which people can import ammunition by mail, by courier, whatever. If there are, can Ontario possibly get a hold on those kinds of importation? If you can't, then you've got a major problem. Those who really want to get ammunition will be able to get it.

Ms Akande: You yourself have referred several times to the possibility of another interpretation as to whose jurisdiction it is and whether in fact it is provincial jurisdiction. While you're giving us your interpretation, at the same time, we ourselves are getting the impression—am I correct?—that you're quite certain there will be many others who will have yet another interpretation about this.

Ms Swinton: I think there would be. I would think that if this kind of bill were passed, at some point you would see a constitutional challenge to it. There are some real interests in it. When someone gets charged, let's say the first time they're told they illegally sold the ammunition, I would think they will as one of their defences inevitably say, "You couldn't pass that law anyway, so you can't charge me." While there are lots of cases which have allowed the provinces to enact what you might call in the United States "police power" kind of laws, you still get these ones that come in every so often that create the uncertainty, like when Calgary's prostitution law went down, or the Nova Scotia control on access to abortion.

As a lawyer I can tell you what the court saw as problematic in them, but what I also can anticipate is that what at least some judges would see as a problem here is that you are into an area that the federal government has been in quite strongly, the gun control area. You are arguably trying to make that regime work better by working on the ammunition side when they've been working on the gun side, and you don't have an extensive sort of regulatory framework; this bill looks like it's going to sit there by itself, a little short bill saying, "Don't buy ammunition." It's not like it's stuck in the middle of a hunting and fishing act, where you've got—having looked at this recently, for my appearance—a very extensive code of regulation about hunting, but also the use of firearms and bows and arrows and so on in hunting, where you see the much closer tie to provincial jurisdiction.

Putting all that together, I'm sure there would be a challenge.

Mr Chiarelli: If this were a federal bill, do you think it would still be open to challenge constitutionally on the basis that this really is the purchase and sale of goods and it ought not to be regulated as criminal law? Would you anticipate that type of challenge on the flip side?

Ms Swinton: I probably would anticipate somebody will challenge it some time. There's that expression that the constitutional law is the last refuge of the guilty person, so in that sense somebody will probably try it. But I think the courts have accepted sort of a preventive role for the federal government in the area of gun control, and this seems to link up to it so much with, "We've got the guns and we're also going to link up what you use in the gun." I would think they would be on safe ground.

ANTHONY DOOB

The Acting Chair (Mr Gilles Bisson): We'll call our next presenter, from the University of Toronto Centre of Criminology. We have 30 minutes. If you can leave some time at the end for questions, it will be appreciated.

Dr Anthony Doob: I was asked to focus on the issue of community-based crime prevention strategies rather than on firearms or ammunition. You have before you some detailed remarks. I don't plan especially, given that we are running late, on going through them in detail, but they are there for whatever use you may wish to make of them. What I might try to do is to limit the length of my initial remarks to try to put this particular issue of community crime prevention in some kind of context.

The first important point that I would like to make about it is that we don't have in Ontario a major or growing crime problem. We certainly have enough crime to keep us busy, but the assertion that the crime problem is growing or has recently become out of control, I think should be questioned and I think really should not be part of the way in which the committee is thinking of the problem.

We certainly have a problem. There's a serious problem of crime there, it's been there for some time and it's important to address it in a sensible way, but I think we shouldn't address it in the context of its being a crisis, something which is new, something which we have to do something about quickly or things will become much worse. I don't see any evidence of that whatsoever.

The second is that I think it's appropriate that we look at community-based crime prevention initiatives, in part because the criminal justice system is not very good at preventing crime. The criminal justice system, at best, is good at punishing people, but it is less good at changing the level of crime within the community. It's attractive to think that governments can change the nature of crime or can change the amount of crime, but I think we're fooling ourselves if we think that this is going to be an effective way of dealing with it. So looking to crime prevention is certainly the strategy I think many criminologists would suggest.

The third is that I don't think we can forget that there are very real costs of crime prevention, just as there are costs of any kind of intervention at the community or government level. I realize the current economic situation that we find ourselves in in Ontario, but I think we have to realize that we're using thousands, I would argue millions, of dollars ineffectively in the criminal justice system.

One way of getting money for community-based crime prevention initiatives would be to look more carefully at the way in which we're using some of our criminal justice dollars. Our criminal justice dollars are not being used effectively. It's a complex question as to how we might improve the use of these dollars, but certainly there's no question that we're squandering a substantial amount of money in this area. I think we do have money for crime prevention; the question is, how do we go about using it?

There's a tendency, as I've pointed out, for the public

to believe that the criminal justice system really is the best way to deal with crime. The first thing we should be addressing is that a deterrent strategy really is, in many ways, a bankrupt strategy within the area of crime prevention and that the criminal justice system, or initiatives even within the community to sort of focus on deterrence, is probably not the most effective way of doing it.

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Kids, young adults, those most responsible for a substantial amount of crime, don't think in a manner which is really consistent with a deterrence model. The process whereby deterrence would be effective really starts with the notion that people are thinking about the consequences. They're assuming there's a reasonable likelihood that they're going to be caught and charged criminally, they have a pretty good idea about what the actual penalty would be and they think they're willing to submit to that penalty, assuming they would be caught. That really isn't the way in which most people are thinking about crimes when they're committing them, if they are thinking about consequences whatsoever. When we're thinking about crime prevention, I think we have to look more into the community.

In my written remarks I have some detailed comments on the report which was released last week called the Violence-Free Schools Policy. I'll leave those largely to your reading, but the main point I would like to make in the context of that policy is that I don't believe at all that this should qualify as something which is a community-based crime initiative. It's in many ways a policy which is in its beginning stages but which unfortunately relies unnecessarily, and I'm afraid ineffectually, on the criminal justice system to do much of its work.

I've detailed many of the problems with one part of that, but in particular I think the problem is that it goes against a community-based crime prevention model in that it dumps many of the problems on to the police automatically without really taking into account the fact that many of these are probably best dealt with within the community or, perhaps more narrowly, within the schools. I personally have more confidence in principals, vice-principals and teachers than is apparent in that particular suggested policy.

I think it's important for us to look within the communities and within the schools and within the larger community for solutions to problems. I don't think the policy that is being proposed in that document, which would require school personnel to call in the police for a large number of events that aren't necessarily events the police can handle very well or that the criminal justice can handle very well, is the appropriate way to go.

In general, I think the problem that we have to face and that this committee is going to have to face in the area of crime prevention is that it has to avoid quick-fix solutions. Quick-fix solutions in the criminal justice area tend to be both wasteful and, in many situations, counterproductive.

The usual starting point, or probably the most important starting point, of a crime prevention policy will be one which really defines the problem at a community-based level in careful ways. This means talking not about

crime or violence but about the specific problem within that community.

If we're talking about crime or threats or specific kinds of threats which are occurring in a particular location, the questions which I think we should be asking at a community level are really: What form does the problem take or what form does the violence take if it's a violence problem? Where is it taking place? When is it taking place? Is it widespread or is it caused by a smaller number of people? It's those kinds of questions that I think we have to address in looking at crime prevention. It's only when we look at it really at the microlevel, at the local level, at the actual problem level, that we're going to be able to find solutions.

Part of the difficulty is that there are many solutions out there for crime prevention but those solutions have to be tailored to the particular problems. If one community has a problem of vandalism, or if a community has a problem of violence, it isn't necessarily the same vandalism or violence problem that another community has. It may be caused by different kinds of people or by different kinds of situations.

The first important suggestion which I think criminologists would have in this area is to look carefully at it and look to the range of solutions possible. Some of those may involve education and understanding on the part of the potential perpetrators of these acts as to what it is that they're doing and what the consequences of it are. Some of them may involve issues of deterrence, usually in terms of apprehension. Some of them may involve trying to find out why the people are misbehaving, are causing crime in the way in which they are, and looking for more basic solutions.

It doesn't necessarily mean that the only solutions are at the structural level of society. I'm not suggesting either that those are beyond the call of this particular committee. In fact, I think they are things that this committee should be looking at. But one can look beyond issues of economic inequality, for example, to crime prevention strategies which have a more immediate kind of impact.

The impacts of crime prevention strategies, though, are unlikely to be completely short-term. One has to look to the long term. One has to look at putting in place policies and strategies which in the long run, over a long period of time, are going to have an impact.

In my written remarks I use two examples, one on drinking and driving and the other on wife assault, both of which, it seems to me, we're beginning to address or we have addressed over the past 10 or 20 years and we're beginning to see in different ways. The solutions to reducing these particular problems are really long-term, and I think in general what we have to learn is that that's going to be the case more often than we would like it to be. It would be attractive to think this committee could recommend legislation and the Legislature could pass legislation which would deal effectively with a particular problem. I don't think it's that easy. If we look for those kinds of short-term quick fixes, I think we're really fooling ourselves.

We have to work at the local level. We have to identify the specific problems we need to address. We

have to look to solutions to these and to remember that these solutions are going to be effective only if there's a long-term commitment to the process and a long-term commitment to trying to find effective solutions within the context of financial constraints and other kinds of constraints on what's available to us.

I am happy to expand on any of the remarks I've made or answer any questions that you might have.

Ms Christel Haeck (St Catharines-Brock): I want to thank you for your presentation. I've been reading parts that you haven't necessarily highlighted in your verbal remarks and I appreciate the comments overall.

You've been in one sense careful not to highlight one thing or another. You talk about examining a problem community by community and really trying to hybridize a solution there, and that's a very interesting point.

Looking at it from a province-wide situation rather than community by community, what would be your priority? What would you see is the first thing, an important thing to undertake? I realize that this legislation is not necessarily something that you think would have the desired results.

Dr Doob: I think there are two things. One is that I would listen to the community's definition of problems, because communities will have a wide range of different kinds of problems, and for those problems what is salient for one community may not be salient for another.

In general, obviously violence is of most concern to most Canadians, and the problem, to some extent, with the way in which we run our criminal justice system is that we're focusing our policies on violence even though a substantial amount of the criminal justice system's problems aren't violence. Nevertheless, I think that in terms of crime prevention, it's violence that we should be focusing on. But when I say that it's violence, as I said, I think we have to look at it at a local level.

When one talks to people who are responsible for certain kinds of property, for example, it seems to me that the problems of violence in the school are really quite different from the problems of violence in a shopping mall. It may look the same at certain levels, that certain people are being pushed or hit or threatened or whatever, but the kinds of solutions that are available to the schools and to the owners of a shopping mall are really quite different.

In that context, you have to say, well, what is it that's occurring? The problem of school violence itself, of course, may vary enormously from school to school. I think we have to understand that, and what I would hope is in the province's policy, which obviously isn't supposed to be coming into effect until more than a year from now, one possibility would be to allow flexibility on a community basis in order to figure out how best to deal with it. If the schools can deal with certain kinds of serious matters very well within the school without calling in the police, I think we're probably likely to be better off in dealing with it. So I would focus on the local interests of those people involved.

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Mr Runciman: I tried to get through your brief

quickly as well. I appreciate what you're saying about the ammunition issue, which is what we're dealing with today, and an element that you raise in respect to the last paragraph: "More importantly, of course, what it may do is divert attention, time, effort, and resources from more effective means of controlling crime."

I agree with you in that respect, and you raise the issue of resources, which I think is an interesting one. I'm not sure that there is enough attention paid around this place in respect to resources, and I look at that in terms of the costs of any piece of legislation or any government initiative. I think that we should have some means of assessing what the costs are if indeed this sort of initiative becomes law. How do we police it? What kind of manpower requirements will be necessitated by this legislation? Are we going to be diverting police from more perhaps meaningful—that's obviously a subjective judgement—purposes in their daily duties? Those kinds of questions I think should be addressed in respect to every initiative undertaken by governments, given the scarcity of tax dollars available. Do you have any response to that?

Mr Doob: I'd agree with you. The way in which I see it really is in terms of opportunity cost. Let us say that we're going to be doing something which would cost \$1 million. The easiest example that I can think of is if we do something which has the effect of putting, let's say, young offenders into custody. We're talking about, in this province, roughly \$200 to \$300 per day per kid, so we're talking about somewhere between \$70,000 and \$100,000 per kid per year. You take 10 to 15 of those kids and you're talking about \$1 million. So one question we can ask is, if a policy is going to put 10 or 15 kids into custody, might we be able to use that million dollars more effectively in some other way? If it's going to cost \$1 million to implement something having to do with ammunition, might we be able to find some other way to do it?

My impression is that there are lots of groups in the communities that are either dealing with victims or dealing with crime prevention strategies which can deal with those kinds of problems better. Using the example of education, my guess is that the desire on the part of many boards to dump problems into the criminal justice system is largely that they don't feel they have the resources to handle it.

Mr Runciman: As a criminologist, how much exposure do you have to front-line police officers? Do you meet with them on a regular basis?

Dr Doob: I certainly teach a number of them. I see them in a number of different contexts. I think that part of the issue that the front-line police officers may have is, again, the paper burden, the additional responsibility. It's a lot being put on to the police which really has relatively little to do with direct front-line policing.

Mr Runciman: I don't want to get into a debate with you. I share your views in respect to the ammunition; I have some serious difficulty with some of the other comments you make, your flat statements of fact about how few people, particularly young people, go through a process of considering the implications of committing an

offence. I think, given my discussions with police officers and what I've witnessed on television in the news, that's not the case. Certainly many young offenders tend to be very much aware of the limited implications for many of them in terms of the commission of a crime, and I have a great deal of difficulty with that approach.

Some of the other matters you're talking about, that tougher penalties are effective deterrents: I think it's effective in the sense that we get some of these people off the street. I think there's an instance I heard in the news today where a two-time murderer had been out and was just arrested this weekend in a shooting in British Columbia. He'd murdered somebody in Canada and murdered a police officer in the United States, and our parole system had allowed this individual back into the community.

I think it's those extreme cases that we have to be able to deal with, and that's why the public is outraged with instances like that. We have to address them, and I'm concerned that people in your profession tend to put too much onus on the other side of the argument in terms of our ability to rehabilitate. I think you also have to understand where the general public is coming from in respect of the concern about criminal activity.

Dr Doob: I think the issue is not whether the criminal justice system as a whole can act as a deterrent. If we're talking about, let's say, penalties for kids or penalties for adults, I think the issue is whether three years versus one year or two years versus four years is going to make a difference in terms of whether or not they will be likely to commit the offence.

In terms of the other issue, I differentiate between deterrence, which is suggesting that by having these penalties out there, people will not commit the acts so as to avoid being penalized, in particular by incapacitation. I think most criminologists would agree with you that there are some people—young people and adults—whom we really don't know how to deal with and we don't have any good solutions for and the best we can come up with is simply locking them up to incapacitate them. I think the purpose behind doing it is clear: We're saying this person is so dangerous that we have to keep them in custody. I think the issue of parole and sentencing is something we'd probably best leave to another time, though.

Mr Chiarelli: Your comments raise questions in my mind about where we're going as legislators. If I can just refer very briefly to some of your comments here at the beginning, you say, "They are obvious points, but at the same time are points that are easily forgotten in the desire to do something relevant about crime."

First, it is not clear to me that we have a major crime problem here in Canada generally, or in Ontario specifically. I would say that, from a legislator's point of view, it appears to me that it is very clear that we have a problem. If we don't have a problem in reality, then we certainly have a problem with public perception of what's going on.

I've been a member now for somewhere around seven years. When I was first elected, we looked at public opinion polls and it would usually show something about the economy as the first issue—jobs, unemployment or

something like that—and almost always in second position, and sometimes in first position, was the question of the environment. Over the last several years, we find that the issues of violence or crime or safety in our communities is way up on the scale compared to where it was.

I would like to know from you, from your expert observation, what is happening out there that makes people tell us that crime and violence are a very serious problem. When I talk to Allan Rock, the federal Justice minister, he tells me he's got to respond to the public by tougher gun control and by amending the Young Offenders Act to make it tougher in certain respects, to address concerns of the public. What are we misreading, if there's no problem with respect to crime in Ontario?

Dr Doob: I'd like to back up a little bit in answering that. I think that sentence which you quoted has to be read in the context of the next sentence, which is, "We...have enough crime to keep us busy," and we have a problem there in the sense that there's something which we can do. There are certainly countries which have lower crime rates than we do.

What I'm afraid of and my concern is that most people I speak to assume that in the last five years or 10 years or 15 years, somehow crime has gotten out of control. I don't see evidence of that. If you look at homicide rates, for example, in this country, they've been more or less stable since the mid-1970s; they go up one year and down the next. There's a lot of variability but I don't see evidence that things are dramatically worse or in any serious way worse than they were a short time ago.

I would agree with you completely, however, that the perception is that crime is increasing. I'm not exactly sure why that's the case. There are certainly some indicators which would give you the impression that it is. For example, if you look at youth crime, the number of violent cases coming before the courts has increased dramatically over the last 15 years. That seems to be a quite sensible response on the part of the police in dealing with violence. If you look at the way in which the police handled violence in the early 1980s, they tended to handle it more informally, and as the public has been pushing them and everybody to deal with it in a more formal way, more of these cases are coming before the courts.

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I'm not convinced that arguing about whether or not crime is increasing or staying the same is really relevant, though. I think there are clearly problems. Crime is not evenly distributed across our society. There are certainly parts of our community which are more affected by crime than others, and I think in that context we should be addressing the issue.

The issue, for example, of violence in schools is clearly something that people are concerned about. We should understand more about the nature of that, and one part of the policy which I would applaud is that we have increased reporting so that we know more about how it's distributed and the nature of it.

What I'm suggesting, though, is that there's a tendency to assume that crime is increasing and to assume that the

best response to this crime is criminal justice system intervention. In that sense, what I would like to suggest to the committee is that the focus on community-based crime prevention initiatives is in fact the appropriate focus and for it not to get diverted into seeing the criminal justice system alone as the solution to problems of crime, whatever level they may be.

Mr Chiarelli: We obviously have to get to the root causes and address them, but there certainly must be a place for the criminal justice system to play, and maybe an improved place to play.

That leads me to the next point with respect to the ammunition bill. As you are aware, there was a drive-by shooting in Ottawa, which was committed by a number of young offenders, or alleged young offenders. They had illegal guns, but they had store-bought ammunition.

I spoke to the owner-proprietor-manager of a hunting and fishing store, located in my riding of Ottawa West, which is an urban riding, and I very specifically asked, "Would you feel comfortable selling ammunition to a 13-, 14- or 15-year-old, no questions asked?" He said, "Yes. I think that should be legal, it is legal, and that's the way the law should remain."

Are you telling me that the province of Ontario should not be concerned about the owner of a store that sells ammunition feeling it perfectly okay to sell ammunition to a 13-, 14- or 15-year-old? I know that 13- or 14- or 15-year-old has had some problems if he or she wants to go in and buy ammunition for an illegal purpose, but given the fact that you have an owner of a store who is perfectly willing and wants it to remain okay and legal to sell to a 13-year-old, do you think it might be appropriate to have a law that says, "No, you've got to be a certain age to purchase ammunition," and there should be certain precautions which the owner of a store takes in selling to a youthful person such as this?

Dr Doob: I certainly am not in favour of selling ammunition to young people. My point, however, was a slightly different one, and that is that if people are able to get illegal guns, I find it difficult to believe that they wouldn't also be able to get illegal ammunition. So my concern about focusing on ammunition is that it may divert us from trying to deal with the problems as they are.

We're having an enormous difficulty, obviously, dealing with control of firearms themselves. It seems to me that it's going to be much, much more difficult to regulate the use of firearms by way of ammunition than it is to regulate firearms themselves.

The previous witness before your committee pointed out the problems we've had with regulating cigarettes, and I think the circumstance here is not too different, that we're looking to regulate something which is very easy to obtain, so that what we're really doing is focusing on obviously a dangerous article, but I'm just not at all confident that by focusing on ammunition we're going to do anything to reduce the number of crimes committed with firearms.

Mr Chiarelli: If we're not distracted by that, you would buy into it?

Dr Doob: I think the issue of regulating who it is who

buys various things under various circumstances, I would agree with that. I agree with the idea that we shouldn't be selling cigarettes to young persons as well, even though kids may be able to get cigarettes in other illegal ways. What I would not like us to do would be to walk away from this, having passed some regulations having to do with the sale of ammunition, and say, "See, we've done something about crime," because I wouldn't be at all convinced that we would have.

The Acting Chair: Thank you for your presentation.
PAUL MULLIN

The Acting Chair: Next we'll be calling the Metropolitan Toronto Police Force firearms registration unit, Detective Paul Mullin.

Just for the purpose of the committee—I know the committee knows already, but for the other people here watching and for the sake of the record—what we're talking about here today is not necessarily legislation. We're talking about a motion in regard to the role that the government of Ontario can play in the control of the retail sales of ammunition, the private sale of ammunition and the ammunition purchased outside the province and the country.

Go ahead, sir. You have 30 minutes.

Mr Paul Mullin: Good afternoon. I am a detective with the Metropolitan Toronto Police Force and have been for the last 30 years. I am presently assigned to the registration unit of the Metropolitan Toronto Police which causes the investigation of firearms, firearms offences, the registration of all restricted weapons, as well as the recommendation and the investigations of the firearms acquisition certificate.

Prior to my posting to that position, I was a firearms officer with the major crime unit and also was involved in the investigation of firearms. I have been also assigned to divisional detachments, at which time I investigated crimes. Most of my investigations had to do with crimes of violence and crimes with firearms.

A little personal history: I am a hunter. I'm a gun collector. I'm a target shooter. I've represented Canada internationally in shooting. I've obtained the highest recommendations and have been accredited several points in standings in the international shooting level. Also, I'd be the first one to say, yes, we do need legislation dealing with gun control; yes, we do need legislation dealing with ammunition, whether it's at the provincial or the federal level.

Just to go through a little bit of history in dealing with ammunition, I draw your attention to the article. Ever since the beginning of time, man has found some way or tried to find some way to annihilate his fellow man. One thing I want to state straight: A firearm is meant to kill. That's all it's meant for; that's what it's designed for. It's from that designation that we've now evolved to the target end of it. However, back in the beginning of history, a firearm was issued for one purpose and one purpose only: to kill.

In dealing with firearms, we go back to the 11th century to the invention of gunpowder. The Chinese invented gunpowder. It was they who introduced the first

firearm. We believe it's around 1130 AD that the Chinese invented a firearm. It was bamboo or paper wrapped with metal and powder was packed in the charge.

No matter how you look at it, ammunition consists of four basic parts: the casing, the primer, the powder and the bullet. It's important that you remember that any definition that you draw has to incorporate those four ingredients. In order for a cartridge to be discharged the primer has to be detonated. I have explained each one of these in the proposal.

I draw your attention to the large number of ammunition manufacturers. Canada only has one known, major manufacturer: IVI. However, there is a lucrative market out there for reloaded ammunition or those that want to load ammunition. That's not even counting those individuals who load ammunition and sell it to club members or other individuals at a minimal profit or even sometimes at a great profit.

1700

In dealing with ammunition, let's draw attention to, first of all, the fact that a gun is a firearm. A firearm is nothing unless it has got ammunition attached to it. The ammunition, the bullet, does the killing. If the firearm was just a firearm with no ammunition, it can't do any harm or injury. Once you inject the bullets, then you have a problem; that's when the injuries or deaths occur.

We in the city of Toronto, the Metropolitan Toronto area, are faced with a plague of imported illegal firearms that have come across the border. The police, with search warrants, are trying very hard to gather up these guns. As you're aware, it's almost impossible. However, when we find these firearms they're usually in the hands of drug dealers or people that were known to us as drug dealers, and of course there are the others that belong to normal citizens who smuggled them across for their own use.

But I'd like to draw your attention to the firearms that come across for drug dealers. They're a cheaply made firearm. They've been used in homicides and robberies. They're a calibre called .380. Numerous times officers have executed search warrants to premises for drugs where they have found just ammunition and no firearm. As we know, in the community the firearms are lent, they're borrowed, they're even rented to different individuals. It's up to that person to supply his own ammunition. So if there's a piece of legislation to curtail the purchase of ammunition or even the possession of it, then we have a charge even though we find the ammunition without the firearm.

Also, in dealing with the ammunition—and when I talk about ammunition, I'm talking about the components also—at the same time the person is apprehended for use of or possession thereof, not only can we ask for a penalty, I'm suggesting on behalf of the chief that we could have a prohibition order on that person dealing with ammunition, which prohibits him from ever possessing it or from possessing it for a lengthy period of time.

An ammunition permit could be issued by the province. There are a lot of people out there that all they do is collect ammunition. They're not hunters, they're not gun collectors, they're not shooters. All they do is collect

ammunition. They would be happy to purchase a permit to allow them to purchase their ammunition. A hunter has no problems, because he's got his Outdoors Card. It could be attached to his Outdoors Card, just a little piece of a certificate; on the FAC, a certificate to the FAC, very simple. However, make it so it's for possession.

If a dealer sells ammunition, it should be his responsibility, and this is something that could be administered by the chief provincial firearms office, that he has to record all sales of ammunition and to whom. There should be an age limit placed on the person purchasing ammunition, which I draw at 18, which falls in line with the Criminal Code. The Criminal Code says that there are also minors; if he's got a minor's permit, he has an FAC, similar to a minor's permit. He can get a certificate attached to that which allows him to purchase his ammunition.

I draw your attention to the money that could be saved by insurance companies paying out for windows, street-lights etc in the urban community, damage done by pellet guns. If we were to control the sale of pellets and BBs, I'm sure we could save thousands of dollars dealing with the damage to property.

Ammunition is controlled by the Criminal Code in some levels. There's a control of ammunition out of handguns which is penetrating body armour. It's a prohibited weapon—nobody can possess; incendiary ammunition—nobody can possess. The Criminal Code also makes reference to the fact of the safe storage of ammunition, that it cannot be stored with a firearm. However, the Criminal Code does not say who can possess, other than the fact if you're prohibited from owning a firearm, it includes ammunition or other explosives.

In closing, I'd just like to mention again that, if ammunition was curtailed, it could possibly be that some of these shootings that we have in our community could be curtailed. I'm opening for any questions.

Mr Chiarelli: Mr Mullin, I assume you were in the room when the previous witness presented his brief.

Mr Mullin: I was, sir.

Mr Chiarelli: If I can just refresh our memory on it, in terms of ammunition sales, he said:

"It may make you feel good for you to think you have done something about gun deaths. I personally do not imagine that this is an area where legislation will make me safer. More importantly, of course, what it may do is to divert attention, time, effort and resources from more effective means of controlling crime."

What's your response to that type of statement and that perspective?

Mr Mullin: Well, sir, we all know what happened at Just Desserts. That was a legal gun that had been cut down, possibly stolen from a gun collection, possibly purchased legally by some means. However, where did the ammunition come from? The ammunition is the one that did the death, not the gun. The gun was just the object that caused the ammunition to be expelled.

If we can control the ammunition it's possible that we control some of these deaths and injuries. Yes, maybe that person could still be alive if he hadn't gone out and

purchased that ammunition for that gun, because right now you don't need a permit to purchase ammunition. Any person could go to the store and buy anything from a .22-calibre cartridge up to a .50-calibre cartridge, whether it's a handgun or a rifle. You can also go out and purchase your shotgun shells.

Mr Chiarelli: Do I understand you correctly, you would prefer to see the legislation ban the illegal ownership or possession of ammunition as well?

Mr Mullin: No, what I said is that we have permits to possess ammunition. Let us go out and get our permits, then that will allow us to go and purchase our ammunition at the quantity we require. But the criminal who goes in and obtains a firearm illegally still has to purchase that ammunition. I draw your attention to some of the handguns, a .380 calibre or 9 millimetre, the ammunition in a retail store sells for roughly \$20 a box or greater. That's going to hamper that person, unless he's going to go out and import it illegally with his handgun.

Mr Runciman: Sergeant, you were talking about smuggled weapons. How big a problem is that, at least in the Metro area where you serve? Are you aware how significant a problem it is?

Mr Mullin: It's a plague, sir. I am quite aware of it. If you read the newspaper on the weekend, the Sun, you read about Larry Braxton. That was my case, I initiated that investigation. We have a dealer down in the United States who has been charged by the Bureau of Alcohol, Tobacco and Firearms, plus two Canadians. The two Canadians are charged with importing illegal firearms into Canada. The dealer down there is charged under their legislation for not recording the sale of firearms.

Mr Runciman: You say these are mostly Saturday-night specials, these little .38s?

Mr Mullin: They are a cheaply made, newly manufactured firearm. They're a semiautomatic. They hold seven shots. They're a .380 calibre; .38 is equivalent to the .38 special that the police now carry.

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Mr Runciman: Do you see any Uzis, the Israeli automatic weapon? Do you see much of that around?

Mr Mullin: The Uzi is basically in the hands of a gun collector who is grandfathered to that weapon.

Mr Runciman: Okay. So you don't see many of them in the hands of the criminal element.

Mr Mullin: Not the Uzis. I would draw your attention to the AK-47, which is a Russian-manufactured assault rifle that we are starting to find in the community, to be used by the criminal element.

Mr Runciman: I understand your support for this resolution in the sense there's an attempt to do something here, but I wonder how realistic it is. You were talking about positives. If smuggled weapons are a plague, it seems to me the argument is made that it's going to be a heck of a lot easier to smuggle ammunition. It's much easier to conceal ammunition than cigarettes, for example, so I don't see how you're going to resolve that issue by simply saying that only certain people can acquire it. I see that as a real problem and a real weakness.

You mentioned too that the responsibility for this should be left with the chief provincial firearms office to control the sale of ammunition. I'd like to know what the implications of that are. How do you control it? What's the paperwork burden here? Also, how do you police it?

I raised this issue with the previous witness about the cost implications of these kinds of things. There's not only a direct cost to the taxpayers but there's a cost as well associated with the time for a police officer, supposedly, or some sort of bylaw enforcement officer, if you're going to delegate these powers to the municipality—I don't know if you can legally—but there are a lot of implications to this sort of initiative that have to be measured. Governments have failed to measure those kinds of economic implications as well.

There's a red tape implication I would think, and police officers are overburdened with red tape now, I think most of you would argue. So there's a pretty heavy downside to this as well that we should be looking at.

Mr Mullin: There is a downside, sir. However, the simplicity of it all is that when the sales clerk does make a sale of ammunition, all it requires of that sales clerk is to first of all ask for the permit, if there is an ammunition permit. He records that on the sales slip, the sales slip is kept by the store and the person walks out with his ammunition. It's a very simple procedure, in my opinion.

The downside of it all is, if we catch somebody who's got ammunition and he has not got a permit, then he can be charged. Although it's a provincial act, we still have something on that person, and yes, we can go for a prohibition if the act goes that way.

But it's the simplicity. I believe the chief provincial firearms office can draw up some type of simple procedure, some type of ledger that is kept, ie, the chief provincial firearms registry that they keep for firearms.

Ms Akande: Thank you very much for your report and your contribution. I think some of the issues that I want to speak to have already been raised by some of the other members so I'll cut it very, very short.

I was concerned about the fact that the very process that you're suggesting around the sale of ammunition and the permit process would in fact take a great deal of funds, not only in terms of implementing the system but in enforcing it once it was in place. I wanted to bring to your attention something I had read in the statistics: that many violent crimes—unfortunately, final violent crimes in that they result in people's deaths—are not committed by long-term criminals but are the acts of emotions of people who select to do this on a one-time and final basis.

I'm saying to myself, if we're going to put a great deal of funds around permits for the sale of ammunition and enforcing to see that only those who have these permits buy it, we still haven't controlled the criminal element who can get this illegally, I've no doubt. We've almost created, by creating this system, another form of illegal trafficking, and that is now in ammunition, yet we haven't any real confidence that we've reduced the number of crimes.

I somehow think the system that you're suggesting

would not only be expensive but distracting to the real problem at hand. Could you help me with that?

Mr Mullin: I know where you're coming from. However, I have to disagree in some respect because, being out in the community, especially in the urban community, you see in different places where you go young people, young offenders who have got possession of pellet guns. You do not require an FAC to purchase a pellet gun. You can go to your local Canadian Tire store and purchase a pellet gun, buy a box of pellets, a box of cylinders and you go out and you can do whatever damage you want.

We've often read in newspapers about the number of injuries that happen. Yes, we'd be saving those. We'll leave the control of the firearms to the federal legislation. Let's get hold of the ammunition, because if we can prevent that young person from getting a box of pellets, then we've saved somebody from injury, ie; I draw back to the situation, this latest shooting that took place up at Black Creek and Lawrence, where the person was shot in the mouth with a small-calibre handgun.

Obviously, that ammunition had been purchased somewhere, and if we can try to control it—let's put it that way: We're going to try and control it. We execute search warrants; we find ammunition on the premises. Okay, who owns the ammunition? Where's the firearm? No firearm. Fine, at least we got an offence that's been committed, straight possession without a permit.

Mr David Winninger (London South): Thank you for coming today. I have a couple of short questions for you. First of all, as a detective on the Metropolitan Toronto Police Force and as an avid target shooter, you probably have extensive contacts. I just wonder whether you had heard any indication that the federal government might be moving to restrict the sale of ammunition.

Mr Mullin: I'm sorry, I can't answer that question. I'm involved in the federal legislation committee. It has nothing to do with ammunition, but I prefer not to answer that question at this time.

Mr Winninger: You'd be in a conflict if you were to answer that question.

Mr Mullin: That is correct.

Mr Winninger: The other question I wanted to ask you to answer is in regard to Professor Doob's paper. I didn't happen to notice whether you were listening in on the last presenter.

Mr Mullin: I was, sir.

Mr Winninger: One of the points he raised, interestingly, is the issue of weapons and ammunition being illegally obtained and then used in the commission of crimes. He raises this both in his paper and I believe he alluded to it during his presentation.

Do you have any knowledge as to the percentage of crimes, violence, that are committed using illegally obtained firearms and/or ammunition?

Mr Mullin: That study is under way now, sir, through a working group and they've targeted the Metropolitan Toronto area. It has not yet been concluded. They're studying homicides, robberies and firearms that were seized by the Metropolitan Toronto police.

Mr Winninger: I see. It would appear that if there were a significant percentage of violent crimes committed using illegally obtained firearms and/or ammunition, one might consider putting all the teeth into legislation. One could, and yet one would still find that the access to weapons is eluding us. How would you deal with that?

Mr Mullin: It would be nice to have it all in one legislation. However, as I said before and as was brought out in the committee here, the criminal is still going to obtain his ammunition; he's going to try to obtain it. That's the part we've got to curtail. If we catch him with his ammunition there's got to be some way that we can hold him accountable for it. Whether he smuggled it across or he obtained it by any other means, he's got to be held accountable for what he has in his possession.

Mr Winninger: What I'm hearing then is there's a very large federal dimension to this problem as opposed to uniquely provincial.

Mr Mullin: Yes.

The Chair: Thank you, Mr Mullin, for taking the time to make your deputation to this committee.

1720

CHIEF PROVINCIAL FIREARMS OFFICE

The Chair: I would like to invite Inspector Henry Vanwyk and Mr Ed Maksimowski, counsel, Ministry of the Solicitor General and Correctional Services. Do we also have Detective Constable John Hicks? Welcome. Please begin any time you're ready.

Mr Henry Vanwyk: Good afternoon, Mr Chairman and members of the committee. My name is Henry Vanwyk. I'm an inspector in the Ontario Provincial Police, currently designated by the Solicitor General to fulfil the role of the chief provincial firearms officer for Ontario, commonly referred to as the CPFO.

With me here today is Mr Ed Maksimowski, counsel on firearms issues from the legal services branch of the Ministry of the Solicitor General and Correctional Services, and Detective Constable John Hicks, a firearms business inspector from my office.

May I please explain that the CPFO creates policy for all firearms officers and local registrars of firearms in police services throughout Ontario. The CPFO also implements new legislation and new policies in Ontario by issuing guidelines to police.

There is a variety of ammunition on the market. The primary controls for that ammunition are found in the Explosives Act of Canada and the Criminal Code of Canada. The Explosives Act of Canada refers to ammunition as we commonly know it as "safety cartridges."

First, let's look at the Criminal Code and the regulations pursuant to the Criminal Code. In order to sell ammunition at retail, an incorporated or non-incorporated business must have a firearms business licence known as a firearms-ammunition permit, a combination permit or an ammunition-only permit. Ammunition permits are issued by the CPFO pursuant to section 105 of the Criminal Code. Ammunition permit holders must abide by the safe storage regulations of the Criminal Code.

Subsection 84(1) of the same code defines a large

capacity cartridge magazine as "any device or container from which ammunition may be fed into the firing chamber of a firearm." A large capacity cartridge magazine exceeding the limits specified by the cartridge magazine control regulations is a prohibited weapon.

The magazine regulations set out the limits for handguns and centre-fire, semiautomatic long guns, as well as a list of rare and historically valuable magazines that are exempted from these rules.

Subsection 86(2) of the Criminal Code outlines the offence of negligent handling of a firearm or ammunition. It is a dual procedure offence with a maximum term of five years upon a second or subsequent indictable conviction.

Let's deal with the storage, display, handling and transportation of certain firearms next. The regulations specify that all firearms must always be stored, transported or displayed unloaded; firearms must be stored separate from ammunition unless stored in the same locked container or vault; loaded firearms may only be handled in places where they may be lawfully discharged, and the various prohibition orders provided for in the Criminal Code specify prohibition of the possession of certain ammunition as well as firearms.

The prohibited weapons control regulations under the Criminal Code also deal with ammunition, particularly companies that test or manufacture ammunition for prohibited firearms.

There are also orders in council made pursuant to part III of the Criminal Code. Subsection 84(1) has a definition of a prohibited weapon and it allows for certain types of ammunition to be declared prohibited weapons by order in council. Prohibited weapons order number 10 lists four types of prohibited ammunition: armour-piercing handgun cartridges, explosive ammunition, incendiary ammunition and shotgun cartridges containing flechettes.

Next, I'd like to deal with the Explosives Act of Canada, a little-known act.

Ammunition, ie, the standard cartridges for rifles, shotguns, pistols and revolvers as we know them, is considered as a type of explosive.

The Explosives Act is very oriented to the safety elements in the manufacture, transportation and availability of various types of explosives. There are Explosives Act regulations dealing with home reloading and the conditions under which such work may be carried on, the quantities of and storage rules for small-arms cartridges and propellants that can be kept for sale, and the quantity of small-arms cartridges that may be stored in the home. Of importance to the issue before this committee is the age for legal sale of ammunition. It is not allowed to a person under the age of 16 years unless that person under 16 years is the holder of a valid permit, known as a minors' permit, to possess a firearm issued pursuant to subsection 110(6) of the Criminal Code. This is a minors' permit for sustenance purposes and is more common in the territories. If the person appears to be under 16, proof of age must be supplied.

The next issue is that of identification of ammunition purchasers. We looked at the role identification could

play in the control of ammunition sales.

First, we asked all the other provincial and territorial jurisdictions in Canada to advise of any known provincial acts about ammunition. There were none reported.

If identification is to be the firearms-only type, then the following types might be acceptable for the purposes of allowing purchase of ammunition:

There's the firearms acquisition certificate, of which there are some 325,000 in Ontario. Within five years, all will have the photograph of the holder on them.

There's the Outdoors Card for hunting. The executive vice-president of the Ontario Federation of Anglers and Hunters advises there are some 600,000 active hunters in Ontario. These do not carry a photo.

There are also permits to carry restricted firearms. There are about 20,000 of them in Ontario, mostly for club target or occupation purposes such as security guards. They also do not have a photo.

There are firearms registration certificates. When you go and register your handgun, the registration certificate is issued, one for each firearm. Again there's no photo.

Even with all those types of documents, there are concerns about other firearms owners and users. There will still be legitimate firearms users in the thousands who do not have one of the above and would be unable to buy ammunition. There are farmers, law enforcement officers who want to practise, and also skeet and trap shotgun shooters, who don't really need any of the kinds of permits I mentioned if they don't want to purchase another firearm but who may still have the need for ammunition and would not be able to buy ammunition if we restrict the types of identification allowed.

This leads to the natural question, what is the purpose of having identification in firearm sales? If it's simply to confirm age, any photo identification will do. If it's to create a record, any photo identification will also do.

It was mentioned that perhaps there should be some form of recordkeeping. On the face of it, keeping a record of persons who buy ammunition appears to have little value when you look at the amount of work and the amount of paper it would take. However, as an investigative tool, it may well provide corroborative assistance in high-profile and other shooting investigations.

Is there really a point of creating an offence, the compliance of which cannot be done unless it's verified through an inspection of records?

If the issue is serious enough for society to deal with it by the creation of a law, should the compliance therefore not involve an ammunition sales register?

If there are successful needle-in-the-haystack investigations, such as fatal hit-and-run investigations with thousands of persons to interview—I hear the record is 12,000—then why could ammunition sales registers not be of assistance in dealing with the purchase by known associates of shooters in serious shooting investigations?

We should look next at the federal realm. From the four years of interprovincial and federal-provincial meetings I have attended, I have always come away with the picture that gun control falls under the Criminal Code

of Canada and that ammunition falls both under the Criminal Code and under the Explosives Act of Canada. From these same four years of meetings, the clear emphasis was always that ammunition controls are federal in nature.

In these meetings that led to Bill C-17, it was suggested by some of my colleagues from other jurisdictions that the control of the sale of ammunition be transferred to the Criminal Code from the Explosives Act so that the provisions would become better known and enforceable by all police. This was not done, although there were no federal objections to the idea raised at the time. I'm assuming it just didn't reach the priority table when the legislation was drafted.

1730

The current legislative options for the federal government include a fresh look at the ammunition question as it relates to the Criminal Code. I'm led to believe that there will be announcements of the new legislation by early fall and that the new legislation may very well touch on ammunition.

A danger in the creation of a provincial ammunition business law is that the federal government may then leave the issue untouched. If other provinces then did not follow Ontario's lead, Ontario would be an enforcement island in a sea of no controls. It would be a difficult enforcement problem indeed.

One of the things we have to understand is the fit of ammunition controls within the general gun control picture. It must always be remembered that federal gun control is done at three levels of endeavour: (1) people controls, (2) hardware controls and (3) offences and penalties.

The people control is the screening out of criminals, also the violent, the unsafe, the incompetent, through the FAC process, thereby attempting to frustrate firearms from being acquired by the wrong people. Further, there are also enabling provisions allowing for prohibitions on firearms possession designed to frustrate persons who have abused the system from reacquiring firearms for set periods of time.

The hardware control level is the control of the movement of firearms, thereby frustrating the illicit movement of firearms through business permits, the registration system, carry permits, rules on collectors, and others.

The offence and penalty provisions deal with the criminal misuse, the negligent misuse and the careless misuse of firearms.

I would like to enter a summary of issues.

The role the government of Ontario might play in the retail sale of ammunition: It could create an offence on the sale of ammunition without having seen or recorded certain particulars from photo ID; it could create an offence of purchasing without providing the same information; it could create enabling provisions allowing those persons who might investigate firearms offences, including conservation officers, providing for their access to those registers; and it could record a number of items, such as date, name, type, calibre etc.

The role the government of Ontario might play in the

private sale of ammunition: This is known as the reloading market, and it's estimated at several million rounds per year in Ontario; this is anecdotal evidence from my staff. Segments of this market are part of the underground economy. The reloading market ranges from persons making their own ammunition for themselves and a few friends, to persons making ammunition as secondary employment or secondary income. A lot of gun clubs also reload for their own members and guest members at discounted prices. The sale of ammunition is prevalent at gun shows, where unlicensed ammunition sales do take place.

The federal theory, by persons responsible for the enforcement of the Explosives Acts, on reload ammunition is that if a person sells the reload ammunition for about the same amount as it took to make it, then it's not really a retail sale and no Explosives Act of Canada designation to manufacture is required.

It is reported that there is only one federal inspector in Ontario to deal with Explosives Act matters in Ontario. There then is some advantage in transferring ammunition controls to the Criminal Code, where every police officer can enforce the controls.

Some statistics on firearms licences that include the sale of ammunition: In Ontario, for the manufacture of ammunition the fee is \$500, set by the federal government, and we have 11 licences in Ontario that include the manufacture in their licence.

Wholesalers selling ammunition: The fee is \$500, and there are 51 licences that include wholesale ammunition.

Retailers selling ammunition but not firearms: The fee is \$25. You write in, obtain the licence by mail, and it'll be mailed to you as soon as the \$25 reaches my office. There are some 2,193 such licences in Canada, as of approximately a month ago, with 33% in Ontario, some 739.

The retailer selling firearms and ammunition: The fee depends on volume—it's prorated—but it could climb to as high as \$800. There are some 5,646 in Canada, as of about a month ago, with 1,206, or 21%, in Ontario.

Those statistics come from the Department of Justice and also my office.

The CPFO staff estimate that there are probably around 50 to 100 unlicensed ammunition retailers in Ontario. CPFO staff also estimate that the number of reloaders in Ontario number somewhere between 50,000 to 80,000. CPFO staff are unable to measure the effect of the underground economy in this area.

A provincial law on ammunition business sales would have to be so worded that it would have to apply to any person selling ammunition to any other person.

What we would essentially do is create a "find committing offence." I am not enthusiastic about creating another paper trail or a paper empire system in company to the systems already there for the firearms controls, so we recommend that there be "find committing offences," such as when Detective Mullin indicated that they come across situations and would like an opportunity to take some action. It's also because at the present time my office does not have the staff to inspect ammunition

dealers alone; we only have time to deal with the firearms and ammunition dealers.

The role the government of Ontario might play in the purchase of ammunition outside the province and country: The federal government should be pressured to instruct its customs inspectors to ensure that persons coming into Canada are in compliance with the quantity and age restrictions of the Explosives Act of Canada.

We must note that without a licence or any kind of permit, any person may bring into Canada 5,000 safety cartridges or rounds of ammunition, except hollow-point ammunition; 5,000 percussion caps/primers used in the reloading process; 5,000 empty primed cases used in the reloading process; and eight kilograms of smokeless powder. I'm not sure whether that's every time you cross the border or whether there are time limits.

It's not possible to detect ammunition crossing provincial borders. The government of Ontario would then be placed in a position to either pressure the provincial governments in Canada to enact legislation similar to what Ontario proposes or pressure the federal government to enshrine the Ontario provisions into federal legislation in order to prevent a patchwork of enforcement.

In conclusion to my remarks, much has been said on who should do what in relation to problems of violence, firearms and ammunition. What must be said is that all firearms owners have a role to play in the public safety of our society.

Further, those persons who are involved in the regulated and unregulated firearms industry, ammunition industry included, must be aware of their public safety responsibilities when engaged in their trade. We know of dealers who are already enforcing a self-imposed business rule of the presentation of an FAC as the only way for a customer to purchase ammunition. Certainly if the federal role needs strengthening, that message must go forward with dispatch from this point.

Thank you for this opportunity to speak here today, and I'm prepared to answer any questions.

Mr Runciman: I appreciate your being here and I appreciate the work you've clearly done to present a brief. I note the comments you make in respect to not having the staff to deal with licensed ammunition dealers, let alone look at the underground system that currently exists and that certainly would grow and probably prosper if this sort of initiative were undertaken in isolation by Ontario alone. Just how tough is it for you now in terms of your staffing levels? How much of a job are you able to do now with the restrictions placed upon you?

Mr Vanwyk: As any good bureaucrat, I never have enough staff to fulfil the vision of what I would like to see in enforcement. Nevertheless, we prioritize our work. Our mandate crosses the entire part III of the Criminal Code. Perhaps as economies improve, and certainly depending on the effect of the new federal legislation, the demands of the new federal legislation could seriously impair efforts.

1740

Mr Runciman: How many people are we talking about in the CPFO staff, how many bodies?

Mr Vanwyk: There is an establishment of 10 uniformed staff.

Mr Runciman: Ten uniformed staff to deal with a population of 10 million people.

Mr Vanwyk: There is a specific mandate that comes from the federal-provincial agreement, which is currently being renegotiated, and this particular mandate deals primarily with the FAC system and also deals with the firearms business systems. They were creations of the 1978 C-51 legislation. If any new federal initiatives increase that workload, that certainly would be difficult. You have to remember that there are some 1,200 firearms businesses in Ontario. A number have dropped out as a result of Bill C-17, but we do attempt to inspect them as often as we can.

Mr Runciman: What does that mean, "as often as we can"? With 10 people and 1,200 dealers, realistically, how often can you inspect?

Mr Vanwyk: There are many dealers in northern Ontario where, for instance, a grocer will become a firearms dealer to assist his or her people in their small community. We have other dealers—I think there's one in the Ottawa area—where you could conceivably take two officers and spend a week.

Mr Gary Malkowski (York East): How strong is your sense that the federal government will move on the sale of ammunition, and what are some of the practical problems that would be involved if one province acted alone?

Mr Vanwyk: I have a sense that it's being discussed at the federal level, and having attended federal-provincial meetings, I also would find myself in some difficulty.

The practical problems: If indeed the federal government were, for instance, to introduce legislation to amend part III of the code so that the purchase or other acquisition of ammunition would have the same controls as the purchase or acquisition of firearms—in other words, you have to have an FAC or you don't have access to it—that concept is already within the police ranks and is something the police could readily enforce.

If you take it to a provincial model, it does become another provincial statute and it competes with other provincial statutes. I'm not sure whether you're familiar with the book that most police officers carry around, with all the offences of all the statutes of the province of Ontario, but it's quite thick already.

It really comes down to if the federal government allows you to bring in 5,000 rounds every time you go to the States, and if you can order through mail-order companies from Winnipeg, or if you can drive across or know somebody who drives across and bring it from another jurisdiction, Ontario as an island—those are primarily the difficulties.

Ms Haeck: I'm extremely interested, living on the border as I do, in what you describe as legally allowed to be brought into the province of Ontario. It looks like they're taking out almost an entire herd of caribou with the amount of ammunition and powder. When was this last looked at? Do you have some idea? This is a substantial amount of ammunition.

Mr Vanwyk: We have been unable to find, even through federal contacts, a compilation of all the regulations of the Explosives Act of Canada, but we have been sent certain pages. I understand there were some reviews of those regulations in 1990 and 1992.

There was the provincial suggestion at some of the meetings with the federal government that perhaps they should change the age limit from 16 to 18 so it would match the age limit of the FAC. However, for reasons I do not know, that was not done.

Also, in regard to bringing in ammunition from near the border, that's not just in Ontario; it's the entire US-Canada border.

Mr Tim Murphy (St George-St David): Thank you for your report and the work you've put into it. I want to follow up in two areas. One was started by Mr Runciman, but I do want to ask your straight-out opinion: Is there a provincial bill that controlled ammunition sales, that encompassed some of the concerns you've outlined, that you would support?

Mr Vanwyk: My support of legislation is virtually automatic by virtue of my employment.

Mr Murphy: I understand that. I meant as an expert.

Mr Vanwyk: It is my sense, from everything that I have learned, that it fits within the federal realm and my preference is to push for efforts in that field.

Mr Murphy: The reason I asked is that I've received calls from individual police officers and chiefs of police who have actually encouraged me and Mr Chiarelli and

others in this regard, and I did want to get your views.

The second thing I want to follow up on is the inspection of firearms and ammunition sellers. How many times, with a staff of 10—and I gather there are 1,206 such sellers—would you visit a retailer in a year?

Mr Vanwyk: It is possible, when you're not implementing legislation such as Bill C-17, which takes a lot out of an organization, to inspect each and every single one each and every year.

Mr Murphy: Does that happen? Let's take 1993. Did that happen in 1993?

Mr Vanwyk: Did we inspect 100% in 1993? The answer to that is no.

Mr Murphy: If there is such a thing as an average inspection, how long is that for each licensed dealer?

Mr Vanwyk: I'm advised that it's anywhere from half an hour to two weeks.

Mr Murphy: Am I right, by this figure, that you do no inspections of any retailer that sells only ammunition?

Mr Vanwyk: That is correct. That's quite common across Canada.

The Chair: Thank you, Mr Vanwyk, for your thoughtful remarks. I thank all three of you for coming and the time you've taken to prepare your submission.

This committee is adjourned till tomorrow. Just to remind the members, we will be meeting on Wednesday as well. We have approval from the caucuses.

The committee adjourned at 1749.

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Wessinger, Paul (Simcoe Centre ND) for Ms Harrington

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Tuesday 7 June 1994

Journal des débats (Hansard)

Mardi 7 juin 1994

**Standing committee on
administration of justice**

Control of ammunition
and community-based
crime prevention initiatives

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ADMINISTRATION OF JUSTICE

Tuesday 7 June 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 7 juin 1994

The committee met at 1543 in room 228.

CONTROL OF AMMUNITION
AND COMMUNITY-BASED
CRIME PREVENTION INITIATIVES

Consideration of a matter designated pursuant to standing order 108 relating to control of ammunition and community-based crime prevention initiatives.

PETER HOGG

The Chair (Mr Rosario Marchese): I welcome Professor Peter W. Hogg to this committee. Mr Hogg, you have half an hour for your presentation. Try to leave time for the members to ask questions, so if you could limit your remarks to 15 minutes, that would be helpful.

Dr Peter Hogg: Thank you, Mr Chair. I'll be happy to do that.

My name is Peter Hogg. I'm a professor of law at the Osgoode Hall Law School of York University. My specialty is constitutional law, and I've written a textbook on constitutional law. Donna Bryce, your clerk, has shown me the speaking notes for Katherine Swinton's presentation to the committee and completely agree with her views as expressed in those notes.

I directed my attention to the question of whether the Act to control the Purchase and Sale of Ammunition would be a valid provincial enactment, and I have no serious doubt that it would be. It seems to me that the province does have the power to control the sale and purchase of a dangerous product like ammunition. The power to do that comes from the province's power over property and civil rights in the province, which authorizes the province to regulate the sale and purchase of commodities, including dangerous commodities, in the province.

A restriction on the sale of cigarettes to minors is an example of a valid provincial law. Restrictions on the sale of liquor are valid provincial laws. Restrictions on the sale of drugs are valid provincial laws, even though the federal Parliament, in the Narcotic Control Act, also has a presence in the dangerous drugs field.

It is not an objection to a provincial law that one of its objectives is to prevent crime. There have been a number of cases—some of them are mentioned in Professor Swinton's notes—in which the courts have said that the fact that the province has the motive of preventing crime does not make a law that is otherwise within provincial jurisdiction into a criminal law. So I don't think it's objectionable to the law that the motive is to prevent criminal activity, but it's not just criminal activity; accidental activity, other dangerous activity with firearms.

Secondly, it's not an objection to the validity of a provincial law that it contains a criminal penalty for its breach. Most provincial laws, as you know, do that, and the Constitution, in section 92(15), specifically provides for that, so the fact that there is a penalty for the violation of the ammunition statute wouldn't make it into a criminal law.

I think the only concern about a statute that looked somewhat like Bill 151 would be the argument that it's really a disguised attempt at gun control, and of course gun control has been traditionally regarded as a federal domain, but I wouldn't acknowledge that gun control is necessarily exclusively a federal jurisdiction. It seems to me that there may well be room for overlapping federal and provincial laws in that field anyway.

Again, if you think of the question of tobacco as an analogy, the province prohibits the sale of tobacco to minors; the federal Parliament is now prohibiting the advertising of tobacco products. Admittedly, the federal legislation is now under challenge, but it's been upheld in the Quebec Court of Appeal. There's nothing intrinsically odd or strange about both levels of government playing some role in the control of dangerous products.

Why don't I stop there, and I will be delighted to respond to questions.

1550

Mr David Tilson (Dufferin-Peel): I suppose the subject of constitutional law is a difficult one and certainly one that we should be considering. Is there an issue of NAFTA, or free trade, of ammunition coming from across the border? I'm ignoring cigarettes and alcohol, but as I understand it, a substantial amount of ammunition can be brought over, and I forget the quantity—was this said in the hearings before?—from the United States legally, and I guess the issue is, can the province regulate that and is that a contradiction of NAFTA? It may not be a constitutional question; it may be. I don't know whether you have any thoughts on that issue.

Dr Hogg: I think it's partly a constitutional question, because I think an attempt by the province to prohibit the importation of ammunition, which of course Bill 151 doesn't try and do, would be unconstitutional, not because of NAFTA but because that would fall within the federal Parliament's trade and commerce power.

There have been some successful laws, though, which have successfully skirted around that prohibition. For example, if ammunition was imported from the United States and then sold in Ontario, there's no doubt that this bill would apply and it would be valid and I don't think

there would be any violation of NAFTA, because what NAFTA requires simply is national treatment. It requires that you treat all ammunition the same way, and the province would be doing that. It wouldn't be giving any favours to local ammunition over ammunition from the United States or Mexico. So I don't think NAFTA would be a problem.

The main problem would be to control people from purchasing ammunition in New York or Michigan and driving it across the border. At the moment, that bill doesn't deal with that until the importer actually tries to sell it. But if the importer uses it for his or her own purposes, it won't be caught by the bill, and it's not very easy to design a provincial law that will catch that.

Mr Tilson: You feel that it's constitutional for the province to enact legislation to regulate the sale of ammunition in hunting stores or stores that sell weapons in the province, but that it would be legally impossible to regulate individuals, obviously, from bringing ammunition over the border—or from any other province, for that matter, I suppose.

Dr Hogg: Yes, that would be more difficult. I'm not sure it would be impossible. You would need a somewhat different bill from this one, but I could imagine a law that said something like this: "No one shall possess ammunition unless they are the holder of a valid Ontario Outdoors Card with the appropriate hunting licence or with a valid firearms acquisition certificate."

That law might well be valid and that would then catch the person who drove the ammunition across the border, because you wouldn't be trying to make the law bite on the transaction of bringing it across the border; you'd simply be prohibiting anybody—they might have made the ammunition themselves—from possessing it if they didn't have the requisite qualifications. That might be possible.

Ms Margaret H. Harrington (Niagara Falls): I had two questions. You pretty well answered the one with regard to some of the practical difficulties about mailing ammunition, say, or bringing it from one province to another. You think that could be remedied fairly simply.

Dr Hogg: I'm not as confident about the validity of the anti-possession law, because I can see that starting to slide closer to a criminal law, but my opinion would be that it would be valid, so yes, I think it could be done.

Ms Harrington: I noted yesterday that Professor Swinton did think there would be some practical difficulties with the importation of ammunition.

Dr Hogg: Yes. You certainly couldn't directly prohibit the act of importation. That is beyond the power of the province. If you did it in the way that I am suggesting, you'd still have a major problem of compliance because it would be so difficult to detect possession that hadn't been evidenced in any way by a purchase or sale within the province. It wouldn't be easy to deal with.

Ms Harrington: Yesterday, Professor Swinton suggested in fairly strong terms that any provincial legislation could be or would be challenged constitutionally. Would you agree?

Dr Hogg: I suppose that is quite likely because

there's an active gun lobby that would be anxious to use all means at its disposal to oppose the legislation, but I don't think the challenge would be successful. I am confident that this bill, for example, would be upheld.

Ms Harrington: So it really does depend on the wording?

Dr Hogg: Yes. The way this bill is designed, I think it clearly stays within the authority of the province.

Mr Tilson: I want to be clear on what you said. You've indicated that legislation regarding the sale and purchase of ammunition is *intra vires*.

Dr Hogg: Yes.

Mr Tilson: I'd just like you to clarify again the possession of it. Does the province have the jurisdiction to regulate the possession of ammunition?

Dr Hogg: Yes. I think there are really three categories. The bill, in my view, is in the safe category of the purchase and sale of ammunition within the province. That's one category. That's safe. Completely impossible is the regulation of importation. That is outside the power of the province.

In the middle, in a grey area, but I think probably valid, would be an attempt by the province to prohibit the possession of ammunition within the province by persons who did not have the hunting licence or firearms acquisition certificate that the bill contemplates. I'm hesitating a little on that because I can't think of any precedents for it offhand, but I think that would probably be upheld. It would not be as clear as the present bill.

The Chair: Mr Hogg, there are no further questions. Is there anything you might want to add?

Dr Hogg: No, Mr Chair. I think I've said all that I can usefully say to you.

The Chair: Then we would thank you, Mr Hogg. I think you've been very helpful.

Dr Hogg: It's been a pleasure to appear before you.
1600

PREMIER'S COUNCIL

The Chair: Dr Tom Brzustowski, Deputy Minister, the Premier's Council on Health, Well-being and Social Justice. Welcome.

Dr Tom Brzustowski: May I introduce Mrs Barbara Morrison, who's a member of our staff, the coordinator of the councils. We are now known, as of last Thursday evening, as the Premier's Council without the long words afterwards. There is now a single council and the long words are all gone. Would you like me to begin?

All right. As you are well aware, Mr Chair, we were invited on quite short notice, but we're very pleased to come because I think that in one corner of your mandate, the matter of prevention at the community level, we may have something which could be of use to you and we'd very much like to share that with you.

I would like to make essentially just three points. One has to do with the recent work of the Premier's Council—under the long name still—the Children and Youth Project, which resulted in a report that I think a number of the members here have received and some in fact attended a briefing on it, called Yours, Mine and Ours:

Ontario's Children and Youth. I'll talk about that very briefly. Related to that, I would like to refer to a little bit of research that is helping develop a knowledge base on the roots of violence.

Finally, I'd like to say just a few words about community mobilization, which is very much our direction on the future. When I talk about that, and when I talk about the roots of violence and the work of the Premier's Council, we're really talking about prevention. I would like to say one or two words about both the difficulties vis-à-vis public opinion and some of the financial implications of moving towards prevention. These are the points; they're sort of three and a half, if I may.

A very simple point about the work on the Children and Youth Project: I'd like to attract the members' attention to the obvious thing that is in there, and that is that the report proposes a number of interventions which might lead to the healthy development of all children. It's a population-based approach; all children would be addressed. The hope is that the right set of interventions at the right times during the development of the young person might lead to the development of a competent, responsible citizen. That's based on a fair amount of research. The very obvious thing I'd like to draw your attention to is that we're talking about an intervention of a social nature—not a medical nature; not creating new institutions; not a physical nature—that can be undertaken by the community when helped by essentially positive or helpful policies.

That is the content of that report: social interventions designed to promote the healthy development of the young individual. That is the work of the council. I think most members have received the report. I have given some copies to the clerk; additional copies are available from us. I think our time would not be well spent going over that report, but at any time that any of the members wish to discuss it with us in detail, we're available, entirely ready to help. That's one point.

The report is based on a great deal of research. I wanted to illustrate to the members that some of this current research is controversial but some of it is also very surprising. I have one page that I've asked to be distributed to you, which is a reprint from a recent issue of a scientific journal called *Science* that points out that in a study done on a Danish population—Danish because the Danes apparently have a tremendous record of keeping good accounts of their social markers, their social indicators—very strong indicators of the potential for violent behaviour were two factors which appeared very early in life.

The first was the difficulty in the birth of the child and the second was the rejection by the mother, which was measured here very strictly, in these terms: that the pregnancy was unwanted, the mother attempted to abort the foetus and the child was sent to an institution for at least four months of its first year. These were the very tight scientific definitions of rejection in this study.

What happened was that in this cohort of almost 4,300 males born in Copenhagen between September 1959 and December 1961, 3.9% of the children met these criteria. But this small minority was responsible for 22% of the

violent crimes committed by children in the entire cohort, which tells the researchers that some of these factors that have to do with the difficulties of birth may indicate a biological vulnerability, and secondly, rejection in the first year of life is a good indicator of what might be the precursor of violent behaviour.

All of this to say that it's from information like this, for use for example in the Canadian Institute for Advanced Research in their human development project, that we are learning that there are social determinants of violent behaviour, social determinants of a lack of confidence of adults, social determinants of a lack of ability to socialize and function within institutions. These are all determinants which in fact apply to quite young children. So this is the kind of scientific basis which has gone into the report which I mentioned at the outset.

Where do we go from here? The second phase of the project on children and youth will deal with community mobilization, because these measures are social interventions that are best taken at the community level and in detailed ways best worked out by the community in full knowledge of their own circumstances, their own conditions.

The Premier's Council has been given by the Premier, as part of its future mandate, three points on which it should focus. One of them is to help communities develop the capacity to deal with their own problems, to do projects. You may know that the council operates by doing projects and the projects bring to one table a group of people who are interested in the same issue but from different perspectives and don't have a history of working together. Over time they actually develop a consensus, and it's an action cut on that consensus that leads to the sort of thing we're talking about.

So community mobilization is very much the focus. We feel we have a lot to learn. I wish we could come in here and say, "We know how it's done and what one must do." We don't. We've had the merest beginnings of some sampling of opinions and reactions at the community level, but it is an important part of our future.

Finally, the last comment I want to make deals with the economics of prevention. Another paper was distributed, a copy of the pre-budget submission from the Premier's councils to the Minister of Finance dated February of this year. The single point made in that pre-budget submission was that government must find the means to begin what has to be a long-term shift of public spending on social programs from a heavy emphasis on remediation or dealing with consequences to a new balance more heavily on the prevention side.

It's interesting that if you look at the amount being spent now on prevention vis-à-vis the amount being spent on the consequences of failing to prevent or, essentially, paying for problems that we know in theory how to prevent, if you compare these two numbers, the prevention spending is tiny compared to the spending on incarceration and the spending on all sorts of remedial measures. That means that a relatively very large increase in spending on prevention could be accomplished at a relatively very small decrease of the spending on remediation if it was just a shift within a constant sum of

resources. The difficulty, of course, is public acceptance of a shift in public spending, because the goals of prevention are very diffuse. They're diffused over society and they're not as immediate to people as are measures that they might rely on when they're in trouble themselves or needing care.

I hope this brief glimpse into what the councils are doing may help in your thinking a little bit. It's a sliver. It's a small corner of your mandate, but it is an area in which we are quite committed to moving forward.

1610

Ms Christel Haeck (St Catharines-Brock): Mr Chair, what you have to see is Dr Brzustowski's T-shirt given to him by his staff members at the former MCU, which very clearly gives you this symbol of a ski that has snow on it and somebody brushing it off, so "brushed-off-ski." They realized that his name, being much longer, provides some interesting problems. I only have five letters in my name and I have many variations on the theme, but the mail still gets to me.

Tom, it's nice to see you again. You've been doing some excellent work over at the Premier's Council, which leads me to my question with regard to the allocation shifts.

Some of the things that you've been doing, and what Dr Mustard obviously has been saying and doing, really look at the prevention focus in I think a different way than what really is being proposed by this legislation and really recognize that there are limited moneys out there, which would obviously require shifting resources and possibly setting some different priorities.

Where would your support lie, very specifically, if I may ask? Obviously something's going to end up being negatively affected in this whole process. I think I'd like to hear your remarks on that, if I may.

Dr Brzustowski: I'll come back to this document, the pre-budget submission, which came from the two councils, both of the old Premier's councils, the Premier's Council on Economic Renewal and the Premier's Council on Health, Well-being and Social Justice.

Both discussed this document and they came down very strongly on the side of investing in prevention. They actually went so far—and this is a statement of faith; I don't think anybody can prove it but a lot of people believed this—that the only way to control the cost of open-ended social programs, the only way to get a handle on that in any way at all, is to invest in prevention.

It's a long-term investment. The benefits may not show up for some time, but these people, the 80 or so external volunteers on the two councils, believe that that may be the only way to control the total cost to society of open-ended social programs, the ones that require service or care or try to repair some damage.

The second point is the one I just finished making. It's a point that bears making time and time again. If you have two numbers and one is tiny, as is our spending on prevention compared to our spending on remediation, you can increase the little one a lot in relative terms by a very tiny shift from the big one.

Barbara can perhaps refer to some specifics in the cost

of the justice system, but the council has come down very, very strongly on the side of investing in prevention.

Ms Haeck: Possibly she could give us some insight into some of these concerns.

Mrs Barbara Morrison: Sure. I'm quite familiar with the area of youth justice and I understand that Tony Doob spoke to you about that yesterday. I would just like to emphasize what he has already said about custodial costs. We are incarcerating far too many young offenders in this country and in this province. We're incarcerating far more than most of the countries in the western world, and they're being incarcerated for non-violent offences, primarily.

If we were able to shift some of the money that we're spending on custodial costs to programs in the community, I think we would see far better results, because the young offenders we are incarcerating are still recidivists. I don't think that increased jail sentences are the answer, as in the recent amendments to the Young Offenders Act that were introduced on Friday by the Justice minister, although he did say that he hopes this will result in fewer jail sentences for non-violent offences.

We are receiving about \$40 million from the federal government through the young offenders cost-sharing program. They're spending \$160 million nationally. We're getting about \$40 million of that, and 80% to 90% of that money is going towards custodial costs. Clearly, that's not the answer.

Ms Harrington: You were talking about the cost of prevention versus remedial measures, and that got me thinking. The question I wanted to ask you was, do you feel that the passage of Bill 167 will have any effect in the long-term impact on this aspect of society that we are discussing now? What I was thinking about was alienation from society as young people grow up who are gay or lesbian, who are in their late teens or early 20s, the lack of self-esteem, the lack of a positive role model for them in society and that feeling of alienation, of not having a rightful place. Do you feel in the long term this bill may address some of those questions which may influence their outcome in life?

Dr Brzustowski: Let me begin first of all with an apology. Between yesterday afternoon and today, I have not had a chance to study the bill. I simply have not, and for me to pretend that I have in trying to answer your question would be foolish.

However, the issue of having young people develop in a way which enables them to participate in the institutions of society, to have socialization skills, to avoid alienation, to in fact never be relegated to the side because of any particular quirks or abilities or aptitudes that they have or fail to have, these are extraordinarily important issues, and I think every indication is that they do affect the behaviour of adults. The competence of the community in the broadest sense is affected by the extent to which a large number of members of that community have the competence to work within their institutions.

There's a very interesting new movement by an old name growing up in the United States called the communitarian movement. It's headed by a man called

Etzioni. Apparently it's quite influential in the current White House. One of their beliefs, which also independently was the belief of the Children and Youth Project working group, was that the parents have the responsibility for raising their children to be competent citizens, but the community has the responsibility to support the parents in that task. Everything comes around the community joining in to help in the socialization, to help in the development of competent individuals.

I can't comment on the bill. I'm sorry; I wish I could. But there is independent information that these are extraordinarily important considerations, the social ones.

Mr Tim Murphy (St George-St David): I want to talk about a couple of things. One of them is the transition from remediation, I guess as you call it, to prevention. I have been a prosecutor in court acting as a crown agent, and I have done in the course of that some young offender matters. I have seen some young offenders go through the system, and their view of it of course is that it's all a joke. They have said that quite publicly and quite clearly while they were sitting in the prisoner's dock, and laughed at the judge and their own lawyer, the crown and everybody who was in there. These are people who are pretty young and already have this attitude. It's clear what they're doing is reflecting an attitude that is shared by those people who have probably been in the system more than once.

I guess my concern in relation to that is, I heard some reasonably shocking statistics, and I'm wondering if they conform to your understanding, from the Solicitor General and Correctional Services ministry that the recidivism rate for male young offenders is 50% and for female young offenders is 33%. Is that your understanding?

Dr Brzustowski: I'll have to turn to Barbara for that.

Mrs Morrison: I'm really not up on the young offender statistics right now. It's quite possible.

1620

Mr Murphy: If that's the case, how does prevention get you some way of dealing with those kinds of figures? We all agree that in theory, intellectually, the idea of nipping the problem in the bud before it becomes a problem is unassailable as an intellectual notion. The problem is how you actually do that in fact.

It strikes me that we don't have any easy answers to that, obviously. One of the things, though, I did want to ask your opinion on is, we have heard proposals for dealing with young offenders and in fact the whole social justice system. The funding to welfare and other kinds of systems that are meant to provide opportunities for people who have been denied the same opportunities the rest of us have is to be cut by 10% to 20%, for example. That is the proposal that's been put forward.

From your view, what kind of impact would a cut in welfare spending of 10% to 20% have on the crime rate in the province of Ontario by young offenders and subsequently by those young offenders as adults?

Dr Brzustowski: Let me deal with what I see as two questions, and please be as keenly aware of my limitations when I speak about this as I am aware of them.

I've heard one suggestion, a profound and disturbing

suggestion, for the source of the attitudes towards the justice system on the part of young people, and it's disturbing because it's so profoundly cultural. The suggestion is actually being made that some of our young people are raised in a culture, a popular media culture or their own local culture, in which they do not develop a sense of the future. They seem to not have the ability for abstract thinking, to be able to draw deductions from observations, and they don't seem to be able to think beyond the present, the sort of nine-second sound bite and the 30-second in-depth presentation.

Mr Murphy: They'd be successful in politics, though.

Dr Brzustowski: The fact is, the suggestion is being made that there are children for whom something in the future, as the prospect of a punishment in the future, is meaningless. That goes far beyond my competence to talk about, but I just pass that on to you because I have heard it and I think it relates to this.

Mr Murphy: I've seen it.

Dr Brzustowski: Yes, all right.

The other point, again based on the work of the Children and Youth Project of the council, it's so important that we remember that the recommendations in that report, based on the idea that there are interventions that'll work, are a set of recommendations of social interventions. There's not really a call for spending there.

On the other hand, I'm sure that the conditions that would make these interventions possible depend on finances; for example, the whole notion of giving the child a good start at birth by providing good services to the mother before birth and good neonatal services afterwards. Clearly if there were some drastic changes in the welfare patterns, some of that might not be capable of being established.

The transition to school, bringing the child to the point of being able to learn in a social setting which is very different from the social setting of the family, developing those social coping skills, that requires somebody's time and somebody's care, not necessarily the parents'. Again, that costs money or it may cost money. It may be a volunteer effort in the community but it may cost money. So there's another possible impact.

I can't predict specifically what it would be but for those conditions to be conducive to those interventions succeeding, I think we can't have the bottom falling out. On the other hand, it's not a scream for more money specifically in that direction.

I wish I could say more but I really can't.

Mr Tilson: Ms Morrison, you made a comment that there were too many young people being incarcerated. All of what you say makes sense and all of these complicated issues—psychological, social, education, deterioration of the family unit, many, many things which are intertwined, just unbelievable, horrible things that are going on by adults to children and children among themselves, stuff that shocks many of us—what goes on certainly shocks me, and I don't think I'm any different than anyone else as to some of the things our society has seen.

We're having people getting shot in dessert restaurants and walking along a park in Mississauga and a street in

Ottawa, just unbelievable things. Many of those crimes are being committed by young offenders and we're reading where in the States, and maybe it's happened here in Canada, awful crimes are being committed in the schools. It seems to be a status to have a weapon in some of these schools, all across the province. I come from a semirural area and these problems aren't just in the downtown core; they're all across this province.

The whole intent of what Mr Chiarelli—and I shouldn't say it without him being here, but I believe his whole intent is that, and what this committee is discussing is, how are we going to deal with these things? You've talked about the initial problems and the preventive issue. The fact of the matter is that we also have to look at the protection of the public.

Lawyers who practise criminal law tell me that young offenders come and say: "It doesn't matter. We're not going to go to jail on this. They're going to slap our wrists." In my riding we have a Camp Dufferin, which is for young offenders, and it holds 31 young people. Well, 30 walked away last year. They just walked away; there are no walls. There's no respect for authority in many of these situations. The police tell me there's less and less respect for the uniform.

I understand all of what you're saying and I commend you on listing all of these issues. They've been talked about by others, and I appreciate all of your thoughts. But as politicians, whether federal or provincial, what are we going to talk about now? All of those things that you're talking about are not going to be solved this week. You're going back even before birth. It's very complicated stuff. Certainly it's complicated for me to comprehend.

Meanwhile, we have all these horrible crimes going on. I for one think—I'm repeating what constituents tell me—that we have gone too soft, that we have let some of these young hoodlums, hoodlums for whatever reason—maybe it's our fault, maybe it's the adults' fault, maybe it's our grandfather's fault, maybe it's our great-grandmother's fault. I don't know. All I know is we have these problems that are going on. Crimes are being committed by people who have just had their wrists slapped, serious crimes.

When you make that comment that there are too many people being incarcerated that isn't what many of the public are saying. They're worried about protection. They want to walk the parks of Mississauga and the streets of Ottawa without the fear of young punks with whatever kind of weapon they may have doing things to them for no cause whatsoever.

Mrs Morrison: I could respond in many ways, but I'd like to make two points. One is that the Young Offenders Act can't be a panacea for all that is wrong. I think the report documents in the context chapter the very serious situation that we feel we are in right now. We feel that we are at a crossroads.

Several of the things that were mentioned are addressed, albeit briefly, in the report, such as poverty. But that was not the focus of the report. It wasn't to focus on the problems but rather to take an approach which is a population-based approach for what we can do

for healthy child development. In terms of the Young Offenders Act, I also think the public have never really had the facts. I think there's a lot of misunderstanding. There's no doubt some incredibly horrendous crimes have been committed by young offenders but also by adults. The Just Desserts involved adults, not young offenders. But I think that when these horrendous crimes happen, we have incredible media attention to them and a lot of misunderstanding.

I think there's also a lot of misunderstanding about the cost of incarcerating these children. I've been in several of the facilities. In a lot of them we don't have a lot of good programming, and I think for a lot less money we could do far more with them in the community in terms of education, retraining, service, retribution for crimes that they have committed. I think that in terms of recidivism we would have better results.

The Chair: Mr Brzustowski and Ms Morrison, I want to thank you very much for coming on short notice. Your contribution was also very helpful to us.

We don't see Ms Wendy Cukier yet. We might recess for a few moments until she and/or the next deputation arrives.

The committee recessed from 1631 to 1635.

COALITION FOR GUN CONTROL

The Chair: I welcome Ms Wendy Cukier from the Coalition for Gun Control. You have approximately half an hour for your presentation.

Ms Wendy Cukier: Thank you very much for allowing me to appear before you. I have to apologize for not having sufficient copies of everything for all the committee members. I actually found out about the meeting fairly late last week, so I'm not as well prepared as I might have been.

I'm going to focus specifically on the framework for gun control that we have been advocating for the last four years. I'd be happy to talk about ammunition in isolation as well because I realize that that's the focus of your particular committee.

It's also important, though, to say at the outset that none of us believes that gun control is a panacea. It's important to start by saying that we recognize very much that a comprehensive approach to crime prevention and community safety has got to fundamentally address the roots of crime. I'm sure you've had lots of expert testimony on that as well as some of the issues in the justice system.

I was a member of the federal minister's Ad Hoc Committee on Crime Prevention and Community Safety, so I recognize and the members of the coalition recognize that gun control is not the whole solution. Nevertheless, we think there is sufficient evidence, and as I said in the letter I have submitted today, I'd be happy to provide you with a more detailed and well-documented brief which presents the pretty copious research from respectable academics who would argue that there is a direct link between access to firearms and homicide, suicide and injury rates.

The other thing that's important to mention is that we don't view gun control as strictly a crime question. It's

very clear that it's a public health issue as well, given the high rate of suicides, particularly among 16-to-25-year-olds, with firearms, as well as the high rate of accidents. You're probably aware that 1,400 Canadians every year are injured with firearms, the average cost of the firearm injury is \$30,000, and it's a \$45-million burden to the health care system. Clearly it ought not to be viewed strictly as a crime issue.

Unless you're dramatically different from the federal elected representatives who have been dealing with this issue, it's likely you've been inundated with letters more likely opposing gun control than supporting it. I want to address some of the key counterarguments that are brought up regularly, and I also want to address the issue of support.

It's very clear that opposition to stronger gun control is very well orchestrated, very well financed, very well coordinated, yet it's very clear from the polls that have been done and from the wide range of community and other organizations that support us that there is very strong public support for gun control. That's essentially what I wanted to address with you today.

I should give you some background. I'm a professor at Ryerson and a volunteer with the Coalition for Gun Control, which was founded four years ago and currently includes 200 organizations that support what we regard as a moderate position. We are not opposed to gun ownership, we're not opposed to hunting, we're not opposed to farmers having guns, we're not even, in principle, opposed to target shooting, but we think public safety should be a priority.

Our position is fairly comprehensive. It includes: renewable possession permits for all guns, including rifles and shotguns; registration of rifles and shotguns, because as you know, right now there are six million in circulation and no one knows who has them; controls on the sale of ammunition, something we've been advocating since we were founded in 1990, and I'll talk about that in more detail; a ban on military weapons and large-capacity magazines; stricter controls on handguns; strict penalties for misuse of firearms; and controls on illegal importation. And with that goes a whole series of points related to implementation and administration of the law, public education etc.

I mentioned in starting that in our view gun control is part of a general crime prevention strategy. The concern we have principally is with murder, suicides, accidents and injuries involving firearms. That being said, it's also very clear that gun theft is a problem: 3,000 guns are stolen every year and those guns, by definition, are being used by "criminals." We've seen a number of those incidents recently in the Toronto area.

If you look at the data currently available on the guns used in murders in Canada, over the last 10 years the majority has been rifles and shotguns, and because rifles and shotguns are not registered you don't know whether they're legally owned, but given that it's relatively easy to get a rifle or a shotgun, we can assume they are. In the last couple of years, handguns have been used more commonly in murders than previously, and the jury is still out on whether that is part of a trend. A study that

was done by the Department of Justice showed very clearly that legally owned guns figure more prominently in certain kinds of crimes than in others. If you look at domestic violence, for example, 80% of the weapons are rifles and shotguns; of those, 80% are legally owned.

If you look at gang-related and drug-related violence, on the other hand, chances are that a higher percentage of the guns are smuggled in. Currently we're working on trying to better document the sources of guns used in crime, but it is very clear that legally owned guns are part of the problem.

In any case, whether the guns are legally owned, stolen or illegally imported, it is fair to assume that in Canada most crimes with guns are committed with legally purchased ammunition, so we're very pleased that this committee is seriously looking at the issue around control of ammunition. That isn't to say that controlling ammunition alone will eliminate the problem, but it will certainly make it more difficult to use weapons that are not legally held.

Without going into great detail on all the points, I'd be happy to answer questions.

One of the things I want to draw your attention to is the list of coalition supporters, which is in the package I submitted. All the organizations on this list, including a number which have endorsed our position over the last few weeks, have formally endorsed the points I outlined. The groups include national organizations like the Canadian Association of Chiefs of Police, the Canadian Police Association, the Canadian Bar Association, the Federation of Canadian Municipalities, the Trauma Association of Canada, and the Canadian Association of Emergency Physicians. Doctors who deal with trauma and emergencies are particularly concerned about firearms because they're typically the people who treat the injured. They have commented on the dramatic difference between what we see in Canadian emergency rooms versus the United States, and they regard that as being in part a function of access to firearms.

Other organizations which support us include the Canada Safety Council, which, as you know, is also very active in the efforts to reduce traffic fatalities and injuries; as well as groups like the Canadian Jewish Congress, the United Church of Canada and so on. In addition to the national organizations which support us, there is a wide range of regional, provincial and other organizations.

The reason it's important to draw your attention to this fact is because we do have representation from groups across the country. We also have representation from relatively small communities, as well as urban centres. One of the misconceptions which is actively promoted, I believe, by opponents of gun control is the notion that this is an urban-versus-rural issue or that this is an east-versus-west issue or that this is a problem that is of concern in Quebec and nowhere else in the country.

That's the reason I included a copy of the Angus Reid poll that was done for us last September, which I think shows quite persuasively that public support for gun control is strong across the country: 86% of Canadians support registration of firearms, 84% support a ban on

military weapons, and 71% would go as far as banning handguns. Interestingly enough, the majority of gun owners support those points as well.

The other dimension that's important to recognize is that gun control supporters in Ontario are second only to those in Quebec, so there's very strong support in Ontario.

The third thing I wanted to point out before leaving this open to question is that I brought along copies of letters from some of the Ontario organizations—not all, but some of the organizations—which have formally endorsed the coalition and which we know have written to the Minister of Justice, Allan Rock, asking that he act on our position. You will recall that the elements of our position include controls on the sale of ammunition.

You'll note that in the pile of letters we are not simply supported by the Toronto Police Association, the Metro Toronto Police Services Board, Toronto city council etc; we also have support from the Thunder Bay police chief, the Sault Ste Marie police chief, the Sudbury police chief, the Sarnia police chief etc. We have support from police across the province, including in northern Ontario.

The other set of letters I included were a number sent by health professionals. The one I want to draw your attention to is the one from the Sudbury General Hospital trauma unit. They say they have just completed a study—they're the lead trauma program for northeastern Ontario committed to the concept of injury prevention in their region—and have documented that intentional and non-intentional fatalities were nearly twice as high in this region, ie, northeastern Ontario, which is predominantly rural, as they were in the rest of the province. Suicides and homicides account for 30% of these figures and guns account for approximately 60% of the methods used to kill. Consequently, they say that gun control appears to be a major issue in northern remote and rural Ontario.

It is important to remember that in this debate you will hear from gun owners and you will hear from gun dealers and you will hear from the groups they fund that gun control doesn't work, that we don't need gun control, that gun control inconveniences—and if you look at what we're asking for, really the most you can say is that it inconveniences—law-abiding gun owners, but on the other hand, we have the police and we have health care professionals from across the country saying that gun control works and we need more now.

I want to close in saying that our position is that we want strong federal legislation. We want the province to do what it can to ensure that we get strong federal legislation. Otherwise we will end up with the patchwork system we know so well in the United States, where Washington, DC, has great gun control but it lives next to West Virginia. So that's our priority: strong federal gun control. That being said, the provinces should do everything in their power to ensure that happens. If it doesn't happen, they will have to then act. Thank you.

1650

Ms Haeck: I'm happy to see in your package that the Regional Niagara Health Services Department is part of the package; I'll read it with interest.

As you and I have met on at least one other occasion, you know the joys of living on the border and the whole problem of moving back and forth and trying to control purchases that were made on the other side. In light of the fact that the province doesn't have any jurisdiction on these over-the-border purchases—that's strictly within the purview of the federal government—how you would deal with the practical considerations of trying to implement it as a province, if this piece of legislation should pass; whether in fact there really is an opportunity for the province to do any serious control?

Ms Cukier: There's a question of direct control, there's a question of advocacy in terms of influencing the federal government, and there's also a question of administration of the law. I believe the Solicitor General of Ontario recently authorized a joint task force, including police forces from Toronto, Peel, Niagara and Hamilton, to really try to deal with the issue of gun smuggling and illegal dealing. I view that as a very, very positive act.

We're not arguing that the provinces should wrest control over this from the federal government, but there are things the province can do effectively to pressure the federal government and, at the same time, to administer the law.

Mr Robert V. Callahan (Brampton South): I was down in Washington recently and somebody there said that if you take out the murders from the violence statistics in Washington, they're the least violent city in the US; ie, mostly what they've got are murders.

In this report you've done, you talk about fewer gun-related offences in Europe. What is the scenario in Europe? Is it more difficult to get a gun?

Ms Cukier: Much more difficult. As I said, because I was asked to appear before the committee only last Wednesday I haven't put together a detailed brief, but I can provide you with an article that was published in the Canadian Medical Association Journal by a criminologist who compared the rate of access to guns in 14 countries—the US, Canada and 12 European countries—and correlated it with suicide and murder rates and showed very clearly that in places where there's less access to guns, there are lower murder and suicide rates.

Mr Callahan: What do they do in Europe?

Ms Cukier: The model we've proposed is identical to the model currently in place in Great Britain. In Great Britain, it's very, very difficult to get handguns. If you want a rifle or a shotgun, you have a permit for that rifle or shotgun. It's registered. When you want to purchase ammunition, you show your permit. And the burden of proof is on the applicant, not on the police, so gun ownership is not regarded as a right but a privilege.

Mr Callahan: The firearms acquisition certificate legislation came in about 10 years ago in Canada. Correct me if I'm wrong, but number one, that doesn't apply to shotguns, does it?

Ms Cukier: Yes, it does.

Mr Callahan: It applies to all guns?

Ms Cukier: You need an FAC, but if you owned it prior to 1978, you didn't have to get one.

Mr Callahan: But the gun itself, the serial number of

the gun is not registered with anybody?

Ms Cukier: Exactly, except in the store where it's bought, but that information remains in the store; it doesn't go anywhere.

Mr Callahan: So if a gun is located at a violent crime, you'd have to go through a bit of rigmarole, I would imagine, to find out who owned that gun.

Ms Cukier: If it's a rifle or a shotgun.

Mr Callahan: The other thing you say that's very interesting, and you haven't got any statistics on it, is that in terms of guns involved in robberies, "While there is limited data available, it appears that many of these weapons were legally owned." I practised criminal law for 30 years, and the weapon of choice seemed to be a sawed-off shotgun which, when the facts were related to the incident, normally was stolen from someplace. Are you not able to get statistics from police departments or from courts?

Ms Cukier: Because rifles and shotguns are not registered, you have no real way of tracing them back to their original source, unless they're reported stolen. With handguns, Metro police did a search: 50% of the handguns they had in custody had been previously registered. But with rifles and shotguns there is no way to trace. If they found the weapon used in Just Desserts tomorrow, they would have no way of tracing that back to its original purchaser unless it had been reported stolen.

Mr Callahan: I guess what you're suggesting is that you're endorsing the licensing of ammunition as proposed in the bill, but one step further: that there should be a system of registration into a central computer bank?

Mr Cukier: Absolutely. Again, I don't want to take the committee's time to go through the details, but as you know, with information technology developing at the rate it is, it would be a relatively simple matter to move from the information that's collected in the stores right now and get that into a database. If you required the FAC in order to purchase ammunition, that would in effect require people to have an FAC as a possession permit, which it isn't right now.

Once you went to that process, you could start requiring that people give you information about what guns they currently own. The current law prohibits the police from asking an applicant what guns or how many they currently own or intend to acquire, when they're applying for the FAC. The only information we have about who owns what guns relate to restricted weapons.

Mr Tilson: Thank you very much for appearing. Your paper is certainly thorough and assists me in a whole slew of facts I had some knowledge of, but not as thorough as this.

I agree with much of what you say and I'm sure you agree with the intent of what this committee is looking at, Mr Chiarelli's bill, Bill 151, An Act to control the Purchase and Sale of Ammunition. That's the general topic this committee is looking at.

But in my riding, a semi-urban/rural area, there are farmers who claim they need weapons to shoot animals that are destroying their chickens. I also know very well

two individuals who spend a lot of time and money collecting antique weapons, replicas and the real thing. They go away to international conferences and spend an absolute fortune on these things. I've attended some of their presentations on the issue with respect to the history of weapons and relating it to our culture. I hear from those people. I hear from hunters. You alluded to all of these things in your presentation. I hear from sports people who just like it for the sport of it, having weapons for the sport.

The next group really alarms me, particularly in rural areas where police protection is becoming less and less, the lack of 24-hour service. With people who live on estate lots out in the country or on farms—they may not be farmers, but they live out in the middle of nowhere—and all this thought that goes on in the United States where everybody's got to have a gun in their bedside table, I have people tell me that they feel comfortable having a weapon, legal or illegal, for that reason.

This report certainly is excellent and the facts are alarming. But what am I to tell these people, all of whom have legitimate—and I'm not attacking what you're saying. I can agree with much of you what you say. But as a politician, what am I going to tell all these people who say they have all these rights?

1700

Ms Cukier: I think they don't have the rights. I think it's clear that the Canadian Constitution is "peace, order and good government." But that being said, I think there's been a real misconception that gun control and gun abolition are the same thing, and that simply isn't true. Probably what you have to do is sit them down and say: "Yes, it's a little more inconvenient, but do you really have an objection to guns being registered? Don't you think it would be a good idea if we could trace guns back to the owners?"

I grew up when you had to go into a Liquor Control Board of Ontario and fill out a little form before you could get a bottle of beer. It seems to me that one could at least suggest the same level of control over bullets, where you have to show a permit or whatever. Quite frankly, even though there are people who advocate that we should all have AR-15s and AK-47s, I grew up in St Catharines with lots of hunters. My mother is from northern Ontario, and most of the hunters and farmers I know have no sympathy whatsoever with the Rambo wannabes, and that's basically what the modern military weapon aficionados are. It's quite a different thing than serious gun collectors who have an interest in history and so on.

I guess all you can say to them is, "Yes, maybe this is a little more inconvenient, maybe it's going to mean a little more paperwork and maybe you're going to have to jump through some hoops." But overall, we have to put the priority on public safety. Nothing that we've proposed will significantly impact on the hunter, the farmer, the aboriginal, and that's the message that really has to be communicated.

The Chair: Thank you very much, Ms Cukier, for your thoughtful presentation and for taking the time to come before us today.

CALVIN BARRY

The Chair: I'd call assistant crown attorney, Mr Calvin Barry. Mr Barry, you have half an hour.

Mr Calvin Barry: I'm assistant crown attorney at the downtown Toronto office for the Attorney General of Ontario. As I understand it, you want some input into the retail sale of ammunition in the province, the private sale of ammunition in the province and community policing and other initiatives similar to that.

I did not have the opportunity to look over the Ammunition Control Act, the provincial legislation that is being put together. I can tell you that there's an Explosives Act, a revised statute of Canada, a federal act, that the Department of Justice prosecutes at times. I have never seen a prosecution in Toronto from the Department of Justice, although I hear they happen from time to time.

I thought it'd be best to give a quick overview of some of the Criminal Code provisions that cover ammunition, just so you know what is there, because there are, as you know, what some people call the Kim Campbell amendments that were in part a result, as I understand it, of the Marc Lépine incident in Quebec. There were a number of amendments that came into force in the summer of 1992. I know some people in my office still don't know about them, so I thought it would be good to make a brief overview.

The Criminal Code covers gunpowder, for example, which is a component used in the making of ammunition and bullets. Section 2 of the code has a definition of "explosive substance." Sections 79, 80 and 81 cover explosive substances.

My answer as to any reforms for ammunition is that your best way to go is federal legislation. Part III of the Criminal Code deals with firearms. It's my view that a lot of provincial initiatives are really piecemeal ways of attacking the problem, a patchwork effect, and that the real answer and the real teeth are legislation at the federal level. The reason the province would be very helpful is that it could lobby and make it known on behalf of Ontario, especially in big metropolitan centres, such as Ottawa, Windsor and Toronto.

I work in Toronto, but I grew up in Thunder Bay, Ontario. I've prosecuted in Thunder Bay, up north around Bracebridge, in Toronto and in Ottawa, so I have a pretty wide spectrum of experiences across the province, at least in respect of the prosecution of criminal offences, particularly violence and ones involving guns.

Looking to the provisions of sections 79, 80 and 81, it is an offence to be in possession of an explosive substance such that it could cause harm to people or property. I highlight that because that's important when I get to the private sale of ammunition.

Subsection 86(2) is your main offence, at part III of the code, that deals with using, carrying, handling, shipping or storing any firearm or ammunition. What is ammunition? You would, in a trial, call an expert from the Centre of Forensic Sciences to say that there are a piece of lead, a component of gunpowder and a shell casing. A police officer with any experience could also testify, and that's accepted at the provincial and General

Division benches throughout the province, what constitutes bullets or ammunition. It's an offence that's known as a hybrid offence, which can be prosecuted on summary conviction or by indictment. The indictable offence would be punishable by up to five years imprisonment. Summary conviction, as most of you know, is up to six months in jail and/or a \$2,000 fine.

It's my view there should be another offence that covers just the possession of ammunition, to make it quite clear. When you have words like "uses, carries, handles, ships or stores," it's problematic because you could have somebody on the street of Toronto with a bunch of bullets in his or her pocket. I recently had a situation with a young offender and the police want to deal with it because the bullets fit restricted weapons or prohibited weapons, which by definition are illegal. A restricted weapon is illegal unless you have a firearms acquisition certificate. This is where an offence lies for careless storage of ammunition or firearm.

Section 100 is an important section in the code. That deals with prohibition orders, and under subsection (1), for an offence that involves violence, the accused could be punished by imprisonment for 10 years or more, or for a section 85 offence, then there's a prohibition that can be 10 years and on a second offence it can be up to life, prohibition for firearms, explosives and ammunition. Explosives cover bombs and that sort of thing, but with ammunition, we're back to bullets and that sort of thing.

What I would like to see under section 100, and a good response from the province to lobby for this, is that there be included section 90 and section 91. Section 90 is prohibited weapons and section 91 is restricted weapons. These should be included in there to cover the handguns that shoot these bullets, but also, if it could be for being in mere possession of ammunition that fits into, and you could use an expert to do this, a restricted weapon or a prohibited weapon, then you would be able to prohibit people, upon conviction of one of these offences or a new offence that they could make, from being in possession of ammunition that fits into a section 90 or 91 handgun.

The new offence, possession of ammunition, could be a hybrid offence: It could be prosecuted by summary conviction or by indictment, say up to five years by indictment. There are certain situations with the young offender, for example, where with bullets you might want some jail but not a crippling amount dealing with the sentencing principles in your worst offender and your worst-case scenario.

1710

Right now under the Criminal Code section 491, there's a forfeiture provision of firearms. Section 102 deals with forfeiture of prohibited weapons and I think ammunition should be expressly included in there. If it is, then you could easily forfeit the ammunition that comes with the guns. You take away the bullets and the ammunition and then these people who are into using firearms that commit offences have no bullets for them.

Provincially, what you might be able to do is have something similar to what they have in provincial legislation for impaired drivers. As you know, under the

Highway Traffic Act, upon conviction of section 253 which is the impaired over-80-type allegations, dangerous driving, failure to remain at the scene of the accident, the provincial legislation kicks in and you can have a suspension for a number of months. In dealing with the retailer, a retail location that sells guns, ammunition and that sort of thing, you could have suspensions if they are not storing their ammunition properly per section 86 of the code, if they're selling to feeble-minded people, people who appear to be impaired, people who are under the age of 18—if the age could be raised to 18, that's another route I would suggest where provincial legislation itself could come into effect—and the revocation of a vendor's licence upon conviction of a criminal offence dealing with ammunition or firearms.

The definition of "ammunition" should also cover pellets, and that would be something that would be best done by amendment to the Criminal Code. As you know, that wouldn't be the legal definition of "ammunition," but pellets cause a big problem in a number of offences, and especially, young offenders are able to access pellet guns. In my view, anyone who is under the age of 18, even under supervision, shouldn't be in possession of any type of firearm. There can be some minor exemptions that can be acquired through a minor permit with the supervision of an adult for northwestern Ontario, a community such as Moosenee, north of Thunder Bay, where hunting and that sort of activity is required for livelihood.

Just so you know, on August 1, 1992, there was a Criminal Code order in council prohibiting armour-piercing bullets, bullets that mushroom upon impact. There was some headway in the August 1, 1992, amendments, but it seems to me that any bullets that can be used in a restricted weapon or in a prohibited weapon, handguns under section 90 or 91 of the code, could covered be also by order in council at the federal level.

Also on August 1, 1992, large-capacity magazines became prohibited weapons for the first time. If you have a handgun, you cannot have a magazine that holds more than 10 bullets, and for a rifle, five bullets. This was part of what I call the Kim Campbell gun amendments at the federal level.

As to some comment that I was able to read in some of the literature that was put out through Lyn McLeod's package, gun-free zones might work. I haven't seen whether or not there would be a constitutional challenge to that sort of thing—I've not had any experience with anything similar—but in bigger metropolitan centres—Toronto, Ottawa, Windsor, London—it could be that we're moving towards you're not allowed to have any guns, for example, in the city of Toronto, unless you have a firearms acquisition certificate for a restricted weapon and you're a member of a bona fide gun club and you have the permit with you, the transportation permit from A to B and the permit to have the gun, not only a gun permit but a firearms acquisition certificate.

If you're coming into the city, what you would do is drop off the gun similar to the way you would at a border where the customs and excise work, and then you pick it up when you leave the country. That could also apply for bullets that are used under weapons that come under

section 90 and section 91. A property receipt could be given, and that could be set up provincially, some type of administrative ruling for that. There could be some section 91 and 92 criminal law power arguments, but that's something that should be looked into further.

There are regulations right now under the Criminal Code pursuant to section 116 of the code which allow the drafting of regulations where the offence penalty for breach of a regulation is under section 86. Those regulations right now make it an offence to have unlocked trigger mechanisms on restricted weapons or on firearms. You have to have a lock on them now, and right now the bullets have to be locked with the gun, which seems to me to be a little silly, because when the criminal gets into one of these vaults or gun cabinets, he or she finds the bullets, and without the bullets, you can't use the gun.

Just winding up, if you have a separate subregulation to those gun regulations under section 116 of the code, you could have a situation where you could have an offence to have them stored together. They should be stored separately: the bullets in one separate locked container and the guns in a separate, distinct locked container. If you are a bona fide gun collector or gun holder, it's very simple to have an extra key or to have a combination lock to access that separate second component. We have a problem in Toronto when we have a lot of these.

I do a lot of holdup squad prosecutions and we trace the gun. There have been a lot of jewellery heists you might have read about in the paper. From September to December of 1993, I prosecuted a number of them. The guns are coming from small towns in a lot of cases, believe it or not. Peterborough, Owen Sound, Bracebridge are where these handguns are being found. There have been break-ins of cottages. You have to up the protection of keeping these guns locked away.

It's one thing bringing guns over the border; there's not a lot we can do about that unless we up the Customs checking of people coming across the border. But that is something that could be increased in terms of some of these other communities and in Toronto to make sure that everything is locked in separate containers.

There was a recent break-in that I'm dealing with the homicide squad on where a number of handguns were stolen. When you go into a lot of these gun stores, you can see a number of guns right in clear view under glass compartments. Where something's locked with glass seems to be a little absurd when you can have a steel enclosure. Criminals can break glass quite easily. They come with a crowbar or with any implement and they break the glass and then they're at the guns. There's no reason, when you're trying to balance the people who want to buy guns legally, bona fide gun collectors and the ones who are at shooting competitions and that sort of thing, why they can't look at a magazine or a brochure of the gun.

The ammunition shouldn't be in clear view. It can be locked separately. I've never seen someone say: "I'd like to look at this bullet. I want to buy it because it has a nice colour to it." So that's something that could be looked into with provincial legislation or with a regula-

tion pursuant to section 116. Finally, really briefly: community-based crime prevention initiatives. I speak on a number of panels that try to encourage this type of activity in the community: 54 Division, for example, is one of the jurisdictions where I prosecute offences emanating from those locations. The autodialer, computerized PC COPS program, is very helpful. The police love it; it's working. Police officers go on bicycles and go to the community. Police officers get to know everyone on a first-name basis.

For example, in 54 Division they've had a lot of success in the Flemingdon Park-St Dennis Drive area with getting the nicknames of the people and getting to know the community. The people start to trust the five or six officers who are on a first-name basis. That sort of thing is definitely helpful for the police and then for the prosecution when we have to have people testify to the crimes that are committed in their community.

There's Neighbourhood Watch, the block captains and that sort of thing. There's now a high-rise watch for high-rise apartments in certain areas in Toronto.

To have on the side of police vehicles "Greek, Portuguese, Italian, Japanese spoken" is a great initiative to encourage community-based policing.

I understand that 54 Division just bought an all-terrain vehicle and so they're moving towards really getting into their communities.

That is all of my speedy presentation.

1720

Mr Callahan: You've indicated that you'd prefer to see this moved through federal legislation. I just put this to you: If it were a provincial charge, you could make it a crime of absolute liability, which would mean if you've got bullets and you don't have an FAC, you're guilty. No mens rea and no defence. Moving it up to the federal level, I think, would weaken the whole process because you, as a crown, would have to prove beyond a reasonable doubt on a different evidentiary burden and you'd have to prove true mens rea. It seems to me that this should be a crime of absolute liability with no mens rea whatsoever. If you haven't got an FAC, you shouldn't have bullets. I'll ask you to comment on it a second.

The second thing is, you're talking about the way we could control guns at the border. Of course, first, how does a customs officer find out that they've got to have reasonable and probable grounds to be able to search the vehicle to find the gun? If he doesn't, then you've got a case where taxpayers' money's wasted and it gets thrown out of court.

Finally, when these courts make these prohibition orders—and I've never tracked this down over the years they've been made against clients of mine—are they fed into a computer system so that they're accessible to anybody—not just the police on a CPIC check—to anyplace that's selling guns or ammunition? Otherwise, what good's the order? The only people who seem to be able to drum up the prohibition order that's been issued against an accused is the police on a CPIC check and probably only if it's been put on there.

But would you agree that it should be much more

accessible to all people on the information highway so that these orders have some meaning to them? They're probably all rhetorical questions.

Mr Barry: To your first question, I think that it might be a little problematic with the 1982 Charter of Rights and Freedoms and the Constitution. It's envisioned like a section 7 argument, for example, life, liberty and security of the person and having a provincial offence which really might cover the area of a criminal offence to make it a balance of probabilities might be your first hurdle. For example, speeding, you still have to prove the case beyond a reasonable doubt, but they call that a strict liability offence and then there are certain other POA offences, as I understand it, that are absolute liability. On parking, for example, you might have a bit of a constitutional challenge with it, but they are moving towards speeding radar and that sort of thing in the province and that's going to have its own constitutional hurdle. So there's always a lot of room to have a charter specialist look at the legislation before it's passed.

I do agree to an extent that having an absolute liability offence would be good in principle, but there are some problems. The Criminal Code would cover it because there's a specific part in it that would give federal jurisdiction. Something like this, I think, should have a federal response to it and then be vehemently prosecuted in some of the bigger jurisdictions where there is a gun problem.

As to your section 100 query, prohibition orders, as I understand it, under the Criminal Code your fire acquisition certificate is automatically revoked upon being ordered into one of these, so you wouldn't have one when you go. I understand there is a liaison with these gun dealers, the legitimate ones, the one who are registered, and with the police to have checks on these people. I'm not sure if it's mandated—I don't think it is—by provincial legislation to make sure that everyone has a doublecheck to make sure there are no bogus FACs going around or forgeries thereof. A province-wide registry on a computer network that gun stores, hardware stores could access would be an idea too, and that could be something that I think could be companion legislation that would be legal if it was provincial legislation.

Mr Charles Harnick (Willowdale): Mr Barry, we have before us this provincial private member's act called An Act to control the Purchase and Sale of Ammunition, and it sets out certain prohibitions for the purchase and sale of ammunition and it prescribes fines for people who contravene the act. One section after the offence section says, "A judge who convicts a person of an offence under subsection (1) shall, if it is the person's second offence or a subsequent offence, make an order prohibiting the person from selling ammunition from the premises" etc.

First of all, my understanding is, if this act is to become law, it would be regulated by the Provincial Offences Act. Am I right?

Mr Barry: That's correct. Definitely.

Mr Harnick: My understanding, as well, is that the vast majority of charges under the Provincial Offences Act, although it doesn't have to be this way, are dealt with by justices of the peace. Am I right about that?

Mr Barry: I'd say about 90% of them in Ontario.

Mr Harnick: Would you not agree with me that when we are dealing with a bill which is a form of gun control in a sense, if we're dealing with regulating the purchase and sale of ammunition, that it would not be the best idea to deal with this kind of an offence, a gun-control-in-essence offence, before a provincial offences court or a justice of the peace?

Mr Barry: I know a lot of justices of the peace, so that's a tough question. A lot of them are very—

Mr Harnick: I don't say that in a way that should be construed to denigrate the abilities of a justice of the peace, but what we are dealing with here is gun control, a very serious matter, that if you look into the bill very closely you'd almost say is overlapping into federal criminal jurisdiction. What I fear is that if you have an act like this, it means that the sections that you're pointing out to us, sections 90, 79, 80 and 81, all of those sections might be overlooked if we can simply send somebody before a justice of the peace.

Mr Barry: As you know, for a provincial court judge you have to be a lawyer for 10 years, and a lot of them are vastly longer at the bar of Ontario than that period. I suppose it's a question as to the type of educational program you'd have if this amendment came out. For example, I believe Judge Lapkin is the one who supervises the province's justices of the peace, and there would have to be a very comprehensive educational program.

There's a provision in the Provincial Offences Act that on consent of both parties, a judge can hear the matter.

For example, in occupational health and safety when there have been some deaths, some of the mining disasters in the province, the adjudication of the trials has been done by a provincial court, because of some of the complex issues and some of the evidentiary issues. What you say there could stem out of inquests in deaths of people too, and among the criminal charges of murder you could have some of those as—

Mr Harnick: My concern is that if we now have really what is a regulatory provincial act that all of a sudden takes one of the elements of gun control and puts it before a justice of the peace, we're dealing with an issue that is of such a serious nature that I'm concerned that it's easier to just do it this way and avoid the provincial court and avoid the gun control sanctions of the Criminal Code, because this is neater, it's cleaner, it's cheaper, it's faster, and all of a sudden we're going to start belittling the issue of gun control rather than taking the Criminal Code and using it and really making an effort, as the previous presenter indicated, to deal with strict enforcement of gun control. Do you see where I'm coming from?

Mr Barry: I think a lot of that has to be with education, but you have a good point about some of the issues and being familiar with the Criminal Code, which probably has to be looked into probably a little bit more.

The Chair: Thank you, Mr Barry, for the contribution you made to this committee and for taking the time at short notice to come before us.

The committee adjourned at 1729.

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Jamison, Norm (Norfolk ND) for Ms Harrington

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Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service



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Third Session, 35th Parliament

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**Official Report
of Debates
(Hansard)**

Wednesday 8 June 1994

**Journal
des débats
(Hansard)**

Mercredi 8 juin 1994

**Standing committee on
administration of justice**

Control of ammunition
and community-based
crime prevention initiatives

**Comité permanent de
l'administration de la justice**

Contrôle des munitions
et des initiatives
pour la prévention de la criminalité
à l'échelle communautaire

Chair: Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Wednesday 8 June 1994

Mercredi 8 juin 1994

The committee met at 1537 in room 228.

CONTROL OF AMMUNITION
AND COMMUNITY-BASED
CRIME PREVENTION INITIATIVES

Consideration of a matter designated pursuant to standing order 108 relating to control of ammunition and community-based crime prevention initiatives.

CANADIAN POLICE ASSOCIATION

The Chair (Mr Rosario Marchese): I welcome Mr Scott Newark from the Canadian Police Association. You have half an hour for your presentation.

Mr Scott Newark: Thank you very much for the invitation. Our association deals primarily in federal matters, as a national organization. For example, I'm a registered lobbyist in Ottawa. Almost all our analysis, as well as presentations on this general subject matter, have been with the federal government. As I'm sure you, Mr Chairman, and this committee are aware, the constitutional reality in this country is that the feds may pass the laws but it is the provinces that have to enforce them. Therefore, the overlap of jurisdiction is extremely important.

My background, by the way, is that I was a provincial crown prosecutor in Alberta before taking up the position with the Canadian Police Association.

There have been a number of cases, it seems to us, that have prompted some of the recent suggestions in terms of legislative initiatives. Although our original suggestions to the Minister of Justice were in December 1993, the essence of them that I think has relevance for this committee is that whatever level of government it is—in that instance obviously it was the federal government—there should be a two-track approach in pursuit of what we refer to as firearms and public safety; namely, first of all, that it was appropriate to deal in restriction of otherwise lawful firearms held by people who have essentially obeyed the laws, including restrictions on ammunition.

In reality that comes down in many ways to harm reduction, or it could be viewed as harm reduction. What you're talking about doing is, for example, reducing likelihood of suicides or accidental death or injury by access to firearms or ammunition, access by individuals who may be irrational at a point, particularly in relation to domestic violence. Fourth, specifically in terms of firearms, probably the large one is theft of weapons that end up in the hands of people who don't obey the laws.

That is the second part of our recommendations, that deal with the people who are not interested in obeying

the laws in the first place, and in many ways it's their activities that have prompted much of the discussion and the debate. The case in relation to ammunition, it's fair to say, at least from my observations, became acute in a case arising in Ottawa where it became apparent that, first of all, the weapons apparently used in a drive-by shooting were stolen weapons and that the ammunition was simply obtained by walking into a department store. It was a manifestation to all of us that in effect we had greater restrictions on the opportunity to potentially buy products like cigarettes than we did on ammunition.

There are some ramifications, though, about the way we either enforce or, in our opinion, don't particularly enforce existing provisions of the Criminal Code that are completely within provincial jurisdiction. As I mentioned, I was a crown prosecutor and I was as guilty of this as anybody else. I'll use the example, if I might, of section 85 of the Criminal Code, which has the mandatory one-year minimum consecutive penalty for a person using a firearm during the commission of an indictable offence. It is almost always in relation to people who are armed robbers, who tend to be the, shall we say, career-choice criminals. Very often, we only catch them after they have done several of these.

After we catch them, you would find, if you looked statistically, that they essentially run the course a lot more: They'll go through as far as they possibly can in relation to trying to get bail, and when they realize they're not getting bail, because the courts also have a greater appreciation that you're dealing with a much more professional kind of criminal, they tend to usually make the best deal they can, which includes getting a plea on as few of the robberies as they can. What happens—as I say, this is my experience, and I've checked with people in Alberta and British Columbia as well as in this province, and I have the same sense that this is a general practice—is that very often those section 85 charges are withdrawn by the crown in exchange for the guilty plea.

If we are really serious about making a statement that if in our society you commit a crime and you arm yourself in the process, we take it seriously, I'd suggest there are two things that can be done. One, in particular, is federal jurisdiction. We've recommended an increase of the minimum mandatory penalty to five years instead of one. Second, though, and this is provincial jurisdiction, I would suggest that in whatever form or fashion you can through your Attorney General's department you attempt to give guidance to the crown prosecutors to not withdraw the section 85 charge in the same volume that they may currently.

I intend to pursue this, because I want to make the point—it was something I was discussing with the Justice minister—and it would be very easy to ascertain, I would think: My guess would be that if you looked at the number of charges laid and the number of charges withdrawn, you would find that section 85 has one of the highest incidences of being withdrawn. That's a policy choice, quite literally, the department can make. We did it, for example, years ago in relation to prosecution on impaired drivers. We made a policy decision in terms of when we would submit the second offender notices. That is something within the jurisdiction of the province that you could do that I suggest would have a large impact on the people using weapons in this province.

The other thing I would suggest you consider as well is in relation to what happens with firearms once they are seized. I'm not sure of the practice in this province, but I can tell you that in at least some provinces there's not a particularly stringent attitude taken in relation to requesting forfeiture of the weapons for destruction. I'm probably bringing a personal bias when I say I think we have enough weapons, and once we get them in the consequence of a criminal investigation, we should, unless there is a very good reason, have them destroyed.

In terms of restrictions on ammunition, we had recommended originally to the federal minister—maybe I can answer a question about this or give you an opinion—and it probably applies equally to provincial legislation under subsection 92(13) in regulation of a trade, literally, or a transaction in trade. Our recommendation was that what we do is put some regulatory hurdle, I suppose, in the way of people acquiring ammunition.

It's not going to make it impossible, by any means, because we have people who, as long as we have lawful firearms, are going to lawfully want to possess ammunition, but it may make it more difficult for 15-, 16-, 17-, 18- or 19-year-olds who have stolen weapons, who don't have an FAC, a firearms acquisition certificate, because they couldn't get an FAC, who don't have a hunting license because they haven't got the wherewithal and, frankly, they don't hunt. It strikes me that anything can be done that would interfere with that process of getting it may be quite productive.

Bullets, in that sense—I'm not a hunter—are unique. I don't think they have any other particular value. I don't think they're used as fashion statements or anything else. They're used to make the weapons more deadly. As such, I think it's appropriate that we attempt to put some restrictions on how people get that.

You're going to have to balance that with people's otherwise lawful right to acquire ammunition, and I suspect, from the list you have here on the agenda, that there's another group that has a specific interest in acquiring that. That's why we made the suggestion about production, for example, of hunting licences and things like that.

It strikes me that if the federal government does not act in relation to dealing with ammunition—and there may be some reasons it might not. I was trying to think of some of the circumstances. We'd have to consider how broad the net's going to be cast if it's turned into a

federal criminal offence which would create a criminal record. Would we also make it an offence to possess ammunition without having obtained it in the way authorized? I think there would well have to be exceptions precisely for groups like the Ontario Federation of Anglers and Hunters, or the hunters. I mean, if they're out in a field somewhere and somebody runs out of ammunition, do we really want to make it a criminal offence that hunter A would give hunter B some ammunition? I suspect not.

You would have, in my opinion, ample authorization under subsection 92(13) of the British North America Act in relation to property and civil rights to regulate the trade—the ammunition sales act, for example—that dealt with documentation that had to be produced before individuals could obtain ammunition. If the federal government does not act, I would urge you to do that. You may just get them into doing it that way themselves.

In so far as you may have the ability to influence the federal government in some of what it does and some of the items that it moves on, just in closing I would like to suggest a couple of the following.

You might well consider an amendment to section 100 of the Criminal Code that deals with a court's ability to in effect disallow individuals to have firearms. It should be based on whom the individuals choose to associate with, and the specifics of that include people with criminal records. The example I've given you specifically involves bike gangs. I accidentally developed a speciality in dealing with that. Right now that's not contained within the legislation. There's some appellate authority that says we can't do that.

The other thing, finally, I'd suggest that you may want to urge on the government is that we don't really have a very good handle, it seems to me, on the amount of guns flowing into this country across our borders. While that's not a provincial area of jurisdiction, those guns, if they are entering—and our information, by the way, from the customs union people is that our border is quite literally a sieve in so far as it applies to interdiction of goods. I have with me, if you'd like, testimony from the Senate when I was there a couple of weeks ago that lays that out from the president of their union, and from one of your later witnesses, Mrs de Villiers, who was with me that day as well. My point simply is that that's a federal matter, what happens at our borders, but when those guns come in, they come into a province, they come into cities, and we have to deal with them.

So anything you could do to urge the federal government as a component part of its strategy to make sure we have what we've recommended, which is a national border protection service with full peace officer status, would be most helpful in dealing with the issue.

Thank you very much, sir. Those were my opening remarks. I'd be pleased to answer any questions if I can.

Mr Tim Murphy (St George-St David): Thank you very much for your presentation. It's good to see you again; as always, an excellent presentation. I want to talk a bit about the section 85 charges. The manual for crown attorneys in this province in fact now has a no-withdrawal instruction. That being said, we find we have

difficulty actually getting the numbers. We hear anecdotal evidence about it none the less happening, as you quite rightly point out, as a tradeoff for guilty pleas on robbery charges or whatever.

The other tradeoff that we find happens is that they don't actually withdraw it, but what they'll do on joint sentence submissions and other things is that they will then basically take the one-year minimum on the section 85 and count that as kind of what they serve regardless of what else happens. The result is that you just get one year no matter what else you're doing, and it doesn't count on top of it. I'm wondering if you could comment on your experience and your organization's experience with things like that happening.

Mr Newark: In effect, not cancelling the legislation, just neutering it: That would be a common sentiment among the people I speak with, that this is so. I suppose that is an example literally of why there is still that connection between the Attorney General's department and the political leadership that's implicit in a person being an elected minister.

Where there is—I would suggest, appropriately—political responsibility, and by that I mean elected, and a decision is made that we wish to pursue this policy, what's called for there is some leadership from the people running the department to say: "Listen, we don't want this to occur. We in fact wish to make the point that these are, as the Supreme Court of Canada has upheld, to be consecutive sentences in addition to it."

If we run into something, and this could also be the case, that the courts are going to then water down the front-end sentence on the armed robbery charges, my recommendation would be to appeal it. If you think you're getting inadequate sentences out of the courts, and I don't say that's so, but if that is the sense, that the sentences imposed are inadequate, then appeal them. If it turns out that the Court of Appeal for Ontario wants to say that's what it is, then that's what it is. But I rather suspect that's not the case.

1550

Mr Murphy: The statistics show, and I can't remember the exact number, that over 80%, approaching 90%, of section 85 offences get—big surprise here—the minimum and no more. I asked the Solicitor General yesterday about the ammunition bill, which is in part before us here. He had expressed a concern about, "Oh, Ontario shouldn't do this alone," that we don't want a patchwork enforcement—a series of excuses, as far as I was concerned.

I think it's fair to say that having a federal government impose these things from the top would be a good thing. But do you think it is worthwhile for the province, in the absence of federal action, to show leadership by enacting this bill and using that as an example for the federal government to then act?

Mr Newark: Yes, sir. That's right in the brief as well, that if the federal government does not pursue the matter with the vigour we think it requires, yes, Ontario should take a leadership role. My guess is that you will find other provinces with a similar view.

I noticed the second part of the discussion is in relation to crime prevention initiatives—Mrs de Villiers and I were both on the Minister of Justice's last national crime prevention council—and how important we think it is that such a crime prevention council go ahead, in part to consider not only the long-run initiatives, which are probably the most important, but also some of the short-run things we can do to deal with the preventable kinds of situations and reduce the kinds of harm.

If we are talking about developing some kind of national consensus from around the provinces, this is exactly the kind of forum it can take place in. I understand there are some delays in the naming of the crime prevention council, and I just suggest that I hope in that area alone, Ontario would take a leadership role in trying to see that the council (1) is named as a national council and (2) that it participates fully.

Mr Charles Harnick (Willowdale): One of the concerns I have with the province enacting an ammunition bill is that effectively that bill becomes operative under the Provincial Offences Act. The problem with dealing with it under the Provincial Offences Act is that it's dealt with in a court that traditionally looks after the Highway Traffic Act, bylaw offences, that kind of court.

It almost relegates the control of the sale of ammunition into a bylaw item. I have some concern about trying to deal with what is in effect gun control in such a really summary type of way. It really doesn't matter how much the fine is, because most of these cases are dealt with by justices of the peace, and justices of the peace don't feel comfortable handing out \$5,000 fines.

I really think the bill, to have any teeth, must be a federal bill. If the best you can do is have a provincial bill, what I want to know from you is how the bill can be structured so it does mean something.

Mr Newark: To answer the first part, my preference would probably be for federal legislation. The difficulty for me is that I am quite sure that we're going to want to have some exceptions to it in the federal Criminal Code; we probably would want to have exceptions even in provincial legislation. Maybe it's because I've been out of the courtroom for 18 months, but I'm developing a degree of apprehension about creating new criminal offences. I was up yesterday testifying about killer cards in Ottawa.

Correct me if I'm wrong, but do you not also, in this province, have, for example, an upper-end driving offence like careless driving? The province I come from has got a \$2,000 fine, and default of payment is six months in jail. In other words, we do have some provincial legislation with some teeth in it.

Mr Harnick: I don't think I've ever in 18 years seen a careless driving offence on a conviction receive (a) a jail sentence or (b) a \$2,000 fine. What I've seen is a fine of several hundred dollars and maybe a licence suspension, but in all likelihood you lose your six points as part of it and that's the end of the day.

I've been involved personally with careless driving offences where, because there's a fatality, the Attorney General has said, "We have to go before a provincial

court judge on a fatality." If there's a way to structure this bill to indicate that it has to be heard before a provincial court judge, maybe that would be something, if we can do those kinds of things.

Mr Newark: I would think you can; it's your own internal procedure. It was not that long ago, I believe, in this province that those kinds of offences did go before provincial court judges. You retain the constitutional jurisdiction to do that. I suppose it's a question—and maybe this is at the bottom of your question—of what priority you assign to it as a government. That being so, I happen to agree with you, as measured by the fact that my preference is to have it in federal legislation.

My point, though, and I think what Mr Murphy was getting at, is what does the province of Ontario do if the federal government is a little slow in responding to this? By the way, my best estimate is that you will see legislation out of the federal government dealing with some of these issues by September.

Mr David Winninger (London South): In relation to the withdrawal of the section 85 offences, my information is that the crown attorneys are instructed not to withdraw those section 85 charges in a plea bargain situation but frequently, for fear of offending the totality principle, sometimes that gets rolled in with an appropriate sentence for all the crimes put together.

You recommend the creation of a national border protection service to attempt interdiction of illegal weapons. That's a marvellous idea, but at the same time, yesterday we had a presenter, if I recall correctly, who in her document showed that you can bring a whole arsenal of ammunition and weapons legally into Canada. I'm just wondering whether you're aware from your extensive experience why that is. Also, if you can bring it in, what's to prevent you from leaving some of it here?

Mr Newark: I didn't get into it, sir, but we have a lot of other recommendations that we think are appropriate in terms of banning of other weapons. I spent a lot of time on the Prairies, and I understand fully the reason some people want to have long rifles when you live out in the country. I don't understand the same requirement when you live in Metro Toronto. We've got recommendations in relation to restrictions on ability to get restricted weapons—handguns, basically—in metropolitan areas. We have recommendations in relation to full registration, from this point forward, of all weapons sold. I didn't get into it because it is mostly federal jurisdiction.

I'd be happy to send a copy of the evidence, because it was extremely disturbing to hear the president of the customs union talking about the state, from the operational perspective, of what their inability is in relation to our borders.

Mr Winninger: I was talking about legal importation of weapons.

Mr Newark: What we're saying is that a lot of the weapons we shouldn't be able to legally import.

Let me go to the other point, your comment about totality. Totality is in the eyes of the beholder. The point I was trying to make with Mr Murphy is that if as a province we have the perspective that, understanding

what the totality principle is, Parliament has actually said it's worth an extra year consecutive minimum, and if a sentencing court's view of totality is such as to render that meaningless—in other words, as he was getting at, deducted down for the total package—my suggestion is that you appeal that and take it to the Court of Appeal and see whether that is exactly what the highest court in this province happens to think. There is that mix between judicial interpretation, but, with respect, you people are the ones who are elected by your constituents to listen to them and make the determination about their views about the prevalence of the use of firearms in committing crimes.

Mr Winninger: I take your point.

1600

Mr Gordon Mills (Durham East): You're a lobbyist in Ottawa, so I imagine you're pretty close to the pulse of what's going on there. I thought you answered this, but I wasn't quite sure if you did: Do you feel the federal government is going to move very shortly on ammunition control?

Mr Newark: Yes, actually. I'm only giving you an insight from conversations with people in the Department of Justice, as well as members of the Liberal caucus and actually with the minister from time to time on different things. I think the difficulty they face is probably the one that every elected body faces: They have a very large caucus that's very diverse.

I can tell you that on Monday nights I'm going with a group of other people to speak to rural members of the Liberal caucus, to try to get some of the ideas across about what we think is possible on this double-track approach, that it doesn't need to be a zero sum game where you're either regulating in relation to lawful owners or you're on the other side. We think we can accomplish both things.

There's a lot of division, as I'm sure you know better than I. It's an issue that triggers a lot of emotion in people. But my sense in dealing with them is that they are going to introduce further restrictions in relation to what I would call otherwise lawfully held guns, and that will include something in relation to ammunition. I try to be as precise as I can on what I think is coming. God knows, I've been wrong several times about it, but my sense is that is still very much on the agenda.

Mr Mills: September?

Mr Newark: I'm just guessing at that, because Parliament is adjourning at the end of June and it's taking so long to get everything else out.

The Chair: Mr Newark, we appreciate your taking the time to make this presentation to this committee.

Mr Newark: My pleasure, sir.

TOM WHITEHEAD

The Chair: We invite Constable Tom Whitehead, Metropolitan Toronto Police, 33 Division. Welcome, Mr Whitehead. Please begin.

Mr Tom Whitehead: Honourable Chair, honourable members of provincial Parliament, other guests, my name is Tom Whitehead and I'm a police constable with

Metropolitan Toronto Police. I've been a constable with the police department for 20 years, and I guess I've done what most of the officers do in a 20-year career. I was in the criminal investigation bureau for a period, I was in the youth bureau for a period, the major crime unit for a period of time, and for the last three years and a bit, I've been the crime prevention officer, which gives me a chance to go to groups and talk about such things as personal safety, robbery prevention and things of that nature.

I was invited here to talk about a twofold question. Actually, the first part was already addressed, I believe on Monday: ammunition and the sale of ammunition. I believe one of the detectives from our police force answered that part of the question.

The issue I'd like to deal with is the second part of the question, which was community-based policing initiatives. If I go back better than 100 years, there was an early police officer who made some rules, and one of the rules was, "The people are the police and the police are the people." In fact, what he was talking about that long ago was community-based policing.

In Metropolitan Toronto, we have been a community-based police force for many years. Certainly we are very proactive in our nature as opposed to reactive. We try not to wait for things to come to us. We try to get into the communities and resolve problems before they start.

A good example of what we've done over the last two or three years is that we've purchased bicycles, which enables us to get right back into the communities. Members of the communities like the appeal of the bicycles and the community officers who are riding them.

What we rely on, though, to help us reduce crime in the future is a partnership with the communities. A good partnership, a good working relationship with the communities, is going to result in less crime. This has been proven. We have proven programs right now that are in effect and very, very successful. It's helped to keep crime down to a minimum.

One of the programs probably on the top of my list, that I can't say enough good about, is Neighbourhood Watch. Neighbourhood Watch in essence is a community program, that the police certainly support, but it's all done through the community. Basically, it's the community being the eyes and ears for the police, the community being vigilant but certainly not vigilante, and if they see something, knowing how to react, knowing when to call the police; if they see somebody walking between two houses, for example, to know whether it's something we should be contacted on. It's a good communication network. It keeps the community together, it keeps the community strong and it keeps that relationship between the police and the community strong. The result: We get a lot of information that normally we wouldn't get. In 33 Division I am the liaison for our Neighbourhood Watch groups, of which we have 56, which have been quite successful.

Some of the other watch programs we have that are equally as successful are Vertical Watch, which is a high-rise Neighbourhood Watch; Hospital Watch, which is very successful in many of the larger hospitals that we

have in Metropolitan Toronto. In Scarborough a new watch program has recently been introduced, this year actually, titled School Watch. Basically, we're trying to get students to be the eyes and ears for the police. They're forming a group, and they want to reduce crime in their schools. Nursing Home Watch is a brand-new program we started last year, very successful. Business Watch, Mall Watch—it all keeps the good communication between the communities and the police force.

Another proven program that once again I can't say enough good about is the Block Parent program. Basically, what the Block Parent program is, it's homes that offer a safe haven for our children. People apply to be Block Parents. They're screened by the police department and they're given a sign, and in the event that you have a child in need of protection or a safe haven or something isn't right, that child can go to that house and be offered safety.

Taxis On Patrol is another program we offer, and this once again is a program where we are relying on the eyes and ears of the taxis. They're running 24 hours a day, and they're seeing a lot of things out there. We're getting good results from that program.

The STEP program, Seniors Taking Extra Precaution, is a program where the Metropolitan Toronto Police Force hires university students, and these university students put on skits for our seniors in the city. These skits include such things as proper areas on a bus to sit, or if somebody comes to your door, what you should do. It's very well received by the seniors' groups in our communities.

PC COPS has been around now about four or five years. It's an auto-dialler computer. It's something we've been using to get our messages out to the community. About half the divisions in the city of Metropolitan Toronto now have this computer. How it works is we would get information where we have, for example, a description of somebody who's breaking into houses or a description of somebody who just robbed somebody. We'd put it into the computer, and the auto-dialler starts calling all the people who are registered in the computer.

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Once again, it's a community-based program wherein the community has to get the money. Originally, when we started this program, the computers were \$23,000, a lot of money for the communities to come up with for one computer. A lot of the officers were going door-to-door and collecting \$1 from each household, so it took a lot of door-to-door to get the program up and running. But once again, it was the community money, and how the police department fits into it is that the computers are lodged at the divisions and we feed the information into them.

Schools: We have programs in the schools that have been really well received. We have the safety program that's been around for a lot of years, Elmer the Safety Elephant, and that is still going. We have a drug awareness program. This is in the elementary schools, the primary grades. We have what we call a VIP program, VIP standing for Values, Influences and Peers. Once again, it's a good program. It gets the message to the

young children of what life is all about and what some of the laws are out there. Then there's the patroller program, which of course is some of the safety patrol people, children who will help others across the street.

We have a unit that goes into the secondary schools. We call it our street crime unit. What they talk about to the kids—we're talking grades 9 to 13—they have a personal safety talk, they talk about drugs, and the big thing they talk about is weapons. They talk about zero tolerance in the school system. Weapons are a concern in the schools. We're trying to get the message across that it won't be tolerated and the school board won't tolerate it.

Some of the other programs we have going: As far as personal safety is concerned, we in Metropolitan Toronto promote the call-police signs, which maybe I've seen from some of your offices, that's very effective and we're getting good success with that. We have engraving tools that we lend out free of charge to anybody in the community. We have breakfast clubs which we sponsor through money we get donated. The breakfast clubs are set up in areas where there are less-advantaged children, and it gives us a chance to get in there and we actually cook breakfast for them, and we try to get the dialogue going and good communication between the police and the children at a very early stage.

Where is all this going in terms of the future? I heard of an interesting program that comes from England, and I don't know if it will be adopted here. It's certainly something I've always thought about. The one in England is called adopt-a-block or adopt-a-mile, something similar to that. You take an area, a downtown block, downtown Toronto where the blocks are small, a residential block, and you go the community and say: "This is your block. You're going to be responsible"—or you want them to say this, that they're going to take responsibility for that city block. That's everything from picking up a chocolate bar wrapper to dealing with a crack house that's opened up on the far side of the block.

The results that they had in England on this program were terrific, even to the point where, for the children who lived on that block, there were rewards for a certain area that was cleaned up to the point where it was noticed. These awards in England took the form of T-shirts and things of that nature. It might be something we'll be looking at down the road in Toronto. I thought I heard somewhere that on the 400 series highways there was the adopt-a-mile program going.

Chief William McCormack has introduced a process that he's called Beyond 2000. It's the direction we are going in Metropolitan Toronto. It is community-based policing totally, with maybe a little bit added, and that's what we call the neighbourhood officer. The whole idea with the neighbourhood officer is that these are going to be dedicated officers we are going to be able to get into neighbourhoods.

That's my presentation.

The Acting Chair (Ms Christel Haeck): Thank you, Constable Whitehead. I think all members appreciate the various good-news items you're bringing of what the force is doing. Mr Harnick, any questions?

Mr Harnick: I do. I was actually at the breakfast club flipping pancakes this morning and they weren't impressed with my performance at all.

I wonder if you could give the committee some idea, and this may be an unfair question, of what the greatest frustrations are today in the life of a police officer trying to maintain community safety.

Mr Whitehead: I'd like to take a minute to think before I answer that directly.

Mr Mills: It's your time. Periods of silence are not rewarded with extra time.

Mr Whitehead: My personal answer to that, the frustrations I would feel are, say, that people are arrested and are back out on the streets in a shorter length of time than one would expect. That's a totally personal view.

Mr Harnick: It's interesting, because I have held crime forums almost all over the province and one of the things people repeatedly said to me is that if someone is convicted of an offence and they're sent to jail for three years, why does three years not mean three years? Why are violent criminals back on the streets in about a third of the time that the courts are deeming they should be spending? Aren't we, by doing that, really saying to criminals, "No matter what you do, it's not so bad. You'll be out quickly," and that we've totally killed the deterrent effect of sentencing? That's what people think and that's certainly the answer I got all across the province consistently. So I'm glad you gave that answer.

Are there any comments you can make in terms of resources available for community policing?

Mr Whitehead: I can't quote directly on figures that are available through the police department or through the government.

Mr Harnick: In terms of adequacy, then.

Mr Whitehead: I would say inadequate, because a lot of the things we are going after are donated; we have to go into the community to get them. For example, I talked earlier about bicycles that are very well received in the community. The bicycles in fact have been donated to us, and that goes along with a lot of the extra equipment we're getting to properly get out into the communities and give them the support they need.

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Mr Mills: Thank you, Constable, for coming here today. I was brought up in an environment where the men were on the beat, and that's the best form of policing there is in the world. When I came to Canada nearly 40 years ago, I said to myself: "What are people doing running around in cars? They're never going to see anything."

You speak from the perspective of community-based programs, and there's one there, if I've got time, I'm going to ask you about. How are these working? Are they preventing crime? Can you tell us about it? Is it working? What specifically is working?

Mr Whitehead: When we have a Neighbourhood Watch that is set up and is functioning 100%, clearly our stats in those areas are dramatically down, and I'm talking stats on break-ins, thefts and things of that nature.

I have to distinguish between a Neighbourhood Watch and a Neighbourhood Watch that's actually working properly.

Mr Mills: It's effective, okay. You mentioned Taxis on Patrol. I've heard of everything else you said except that. If I'm a taxi driver, how do I become involved in that plan? Do I contact you at 33 Division and say, "I want to be in that?" How does that work?

Mr Whitehead: It's actually a program that is done through the companies. The program is very simple for them. It's just that they are the eyes and ears. It's important when we talk to these people who are going to help us that they realize vigilance is what we're looking for, not that they have to start grabbing people or being vigilantes or anything like that.

Mr Mills: That program, I read in the paper, is bringing success because people say they got the tip from the taxi driver. You're to be commended on that. It doesn't work in a one-taxi town perhaps, but certainly in Metro.

Ms Zanana L. Akande (St Andrew-St Patrick): Your point of view is interesting, Constable Whitehead, in that Professor Doob, who is a professor of criminology, was here yesterday and he shares your interest and your feeling that the primary solutions have to begin in the community. But I carry you back to this piece of legislation about the control of the sale of ammunition. I'm going to ask you to speculate about what you think the real effect of this piece of legislation might be in achieving some significant difference in the crime rate. I ask that, given that the police report that many of the guns used in crimes are brought here illegally or stolen.

Mr Whitehead: The legislation being talked about and considered is going to make a difference—my personal view. I feel it's a step in the right direction to help myself as a police officer and to help the citizens of this country.

Ms Akande: I can't tell you how much it's going to cost; I don't know that. I don't know if anyone else has speculations on the cost of the implementation of this legislation. I want to ask you, though, do you believe the money would be better spent in promoting and furthering the kinds of activities about which you spoke that occur in the community?

Mr Whitehead: Can we do both?

Ms Akande: I don't mean to put you on the spot. I just wanted to gauge whether you had an opinion about that. That's fine. You may not have considered it. I just think it's a question worth considering.

Mr Robert Chiarelli (Ottawa West): Constable Whitehead, I personally—I don't know about the other elected officials—operate at a bit of a disadvantage. We see and hear about statistics, we read reports in the media, we hear our fellow politicians debating the issue of crime, safety in the streets etc, and I appreciate the opportunity to get some feedback from somebody who has had both feet planted firmly on the ground for—was it 25 years you mentioned?

Mr Whitehead: Twenty years.

Mr Chiarelli: Over those 20 years, firstly with

respect to streets and neighbourhoods, and secondly with respect to schools, do you think they are safer today than they were 15 or 20 years ago, are they less safe, or what is the status of safety over that time period? Has it deteriorated? Are we maintaining the status quo? What's your opinion on that?

Mr Whitehead: If we look at a basic crime such as break and enter, 20 years ago maybe we all had milk boxes in the side of our houses, yet our homes did not get broken into, or even at that period we didn't lock our doors at night and our homes weren't broken into. Now I would dare say that if you had either/or, if you had a milk box or an unlocked door, chances are you would be broken into. In fact, I would recommend you buy bars and alarms and so on and so forth. In that light, I've seen that particular crime go up quite considerably.

As far as in the schools is concerned, I think that in the 20 years I've been a police officer, people have changed too. Weapons in schools was not there 20 years ago. Now it is there, and it's a real cause of concern for us, and I'm sure for the people of the school board and those who work in the school. They've adopted a policy, as a result, of a zero tolerance.

Mr Chiarelli: Partly the reason why I asked the question was that we had another presenter here who was a criminologist from one of the universities and his brief stated quite clearly that the crime situation is not worse. Of course, he's looking at statistics and so on and so forth. Sitting from where I am, you kind of get a double message sometimes, and that's why I basically wanted to get a perspective on what's happening on the ground.

You mentioned a lot of programs that are working. You talked about the different watch programs, the Block Parents etc. Do you think any of those programs are being threatened now by either the social contract or government funding cutbacks? Secondly, do you think there are any specific programs the provincial government could get involved in that would make a difference?

Mr Whitehead: All these programs could probably use assistance from the provincial government. I think they're all, at some point, scrambling for funds to keep themselves going.

For example, Neighbourhood Watch. It's a community program, yet it's something we're encouraging, something we want them to do. There's no money for paper. There's no money for any supplies. There's no money for any phone calls they have to make. There's no money for any faxes they have to do. This is all generated from within, from money they come up with from within.

Maybe a program where we had a universal system where we had information going out to all residents in Ontario, something like that. Of course, the information would change city to city.

Mr Chiarelli: Crime prevention information?

Mr Whitehead: Exactly.

Mr Chiarelli: In other words, a door-to-door, province-wide program?

Mr Whitehead: An awareness program, yes.

Mr Murphy: I represent a riding that includes most of 51, a bit of 52 and 53. What I've heard from the police officers in those divisions is that across Metro they're more than 500 officers down from what they think would be the optimum service level. For example, in 51 Division, there's a 33% drop in the number of officers dedicated to foot patrol. Have you found that to be true in your division and other divisions, and do you have concerns that the social contract cuts in policing are affecting public safety? A \$1-million question.

Mr Whitehead: To answer that, my own opinion is that yes, we are down police officers in the division I work out of and, yes, there is potential risk to other officers because of the shortfall in the numbers.

Mr Murphy: Because of that, a potential risk to public safety?

Mr Whitehead: Yes.

The Acting Chair: Thank you, Constable Whitehead, for your time and comments. Your input is definitely important to us.

ONTARIO FEDERATION
OF ANGLERS AND HUNTERS

The Acting Chair: The Ontario Federation of Anglers and Hunters, Mr Rick Morgan, executive vice-president.

Mr Rick Morgan: It is a pleasure to be here and particularly to have been invited to represent many law-abiding firearms owners across Ontario. I will stick as closely as possible to the prepared text that we have delivered to you, and I hope you'll bear with me. I think many of the things we are saying are worth repeating.

My name is Rick Morgan. I'm the executive vice-president of the Ontario Federation of Anglers and Hunters, and that's a position I've held for some 20 years. I've had extensive involvement in firearms legislation and education over that period of time and indeed throughout my whole life. I was one of the early hunter education instructors in this province. I've used firearms personally since I was 10 years old.

A bit of background on the federation: We represent some 70,000 dues-paying members across this province and 490 member clubs. They are, of course, spread throughout every community in the province, north, south, east and west.

Many of our member clubs and members are involved in firearms education and have been for many years. It was our federation which brought hunter safety education to this province in the 1950s. We remain partners with the Ministry of Natural Resources in the delivery of that program. There are currently some 800 to 1,000 instructors in the field instructing people in that course.

I want to comment on Bill 151, which I believe Mr Chiarelli introduced on April 18 of this year. We appreciated the opportunity to comment to various MPPs who contacted us at that time. It was very kind of them to do so and we appreciated them wanting to hear our concerns. I understand that some of the wording in the legislation may at least have been tempered or modified as a result of the kind of input we provided, and we thank you for that opportunity.

To reiterate our concerns, however, we're concerned

about the placing of provincial restrictions on the sale of ammunition. The bill, as drafted, would restrict and penalize law-abiding citizens, law-abiding firearms owners and users, but we believe, have little or no effect on the criminal misuse of firearms or ammunition.

The community of firearms owners of course covers a wide spectrum, and I won't go through the list but depending on the activity of the various users, they may use several hundred rounds of ammunition in the course of a year or they may use only one or two rounds.

The bill, as written, would penalize those who do not maintain a current FAC, firearms acquisition certificate, or a valid Ontario Outdoors Card, hunting version. These people, who I expect number in the hundreds of thousands in Ontario, would be forced to acquire either the FAC, at a total cost of between \$75 and \$250, or to obtain an Outdoors Card through taking a hunter safety training course at a cost of up to \$100. Additionally, these permits would be required to be kept current, at \$25 to \$50 every five years for an FAC or \$6 every three years for an Outdoors Card.

Related to the discussion is the lack of grandfathering in Ontario of the FAC safety course exam. Although the majority of hunters in this province have gone through a hunter safety training course and passed an examination, Ontario has not grandfathered them into that system and they will now have to pass an examination again at some cost and at some additional time. We think that provides an incentive, unfortunately, to law-abiding citizens to circumvent a law which they consider to be unreasonable. The people in this room know better than I that the citizens of Ontario have to perceive a law to be fair before they will deem it necessary and appropriate to obey.

In this case, the fact that they have been using firearms for many years, have been highly safety conscious, have passed examinations and have invested a lot of time and money and now have to do that sort of thing again is deemed to be inappropriate. That is why the federal government allowed grandfathering by the provinces. That's the very reason they put that in the legislation in the first place.

Recent estimates range between six and 21 million legally owned firearms in Canada, yet the Canadian Centre for Justice Statistics reports that only 5% of violent crime in Canada involved the use of firearms. Of course, the federal Justice department statistics do not record which segment of this 5% was legally owned or illegally possessed firearms.

Given what we do know of the illegal trade and traffic of firearms, coupled with the recent legislated requirements for safe storage, the incidence of the use of legally owned firearms in violent crime is bound to be immeasurably small.

In looking at the rate of homicide in Canada from 1926 to 1992, it's apparent that there was a jump, in roughly 1970, in the use of firearms in homicide. The homicide rate doubled to 2.5 deaths per 100,000 and has remained relatively constant since then, notwithstanding the abolishment of capital punishment in 1976 or previous rounds of federal gun control regulations in 1978 or

1991. The proportion of homicides involving firearms has been relatively constant at about 35%.

Two thirds of all accused murderers in 1991 were known to have criminal records, the majority for previous violent offences, and they were already prohibited from legally acquiring or possessing firearms. These people are not eligible for FACs and yet they had firearms and used them in crime. Clearly, requiring them to have FACs for the purchase of ammunition will have no impact whatsoever on those people.

The legal firearms owner is not the source of firearms for the criminal element in society. A recent police operation conducted by regional police forces stretching from Hamilton to Durham found the overwhelming majority of firearms used in crime were smuggled into Ontario from the United States and sold on urban streets. The Solicitor General could provide you with further information on Project Gunrunner, if you do not already have that.

While the theft of legally owned firearms and subsequent criminal misuse has always been extremely rare, the 1991 amendments to the Criminal Code of Canada, known as C-17, allowed Parliament to pass regulations to define Canadian standards of firearms storage. As a result, all firearms must be stored either disassembled or locked, so that they cannot be used readily. Additionally, restricted firearms, such as handguns and some long guns, must always be stored inside a secure, locked vault or container. Privately owned ammunition must always be stored in a separate location unless both the firearm and the ammunition are stored inside a locked vault or a secure container.

Safety training for Ontario hunters began in 1957 and became mandatory in 1960 for all first-time hunters under 20, and since then, that has gradually been phased in and become mandatory for all first-time hunters. Handgun target shooting also trains people every year, in addition to the 20,000 to 35,000 hunters who are also trained.

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The results of those efforts have been outstanding. In 1960 there were 154 hunting accidents, with 36 fatalities. Now, with the majority of hunters afield having successfully completed hunter safety training, fatalities and injuries have been reduced by more than 80%. In the last few years, there have been only one or two fatalities in hunting.

Legal firearm use in Ontario has remained relatively constant over the last 20 years. Annually, between 600,000 and 700,000 provincial hunting licences are sold, and Ontario hunters spend between five million and six million dollars in the field hunting annually.

An important point to bear in mind is that the majority of Ontario farmers also own and use firearms for predator control and nuisance animal control. Little information is available on the use of firearms by farmers, but it is expected to be substantial, and these are people who primarily have no FACs and no hunting licences and see no need to acquire either. They have their tool, the firearm, and use it as an implement of farming.

Likewise, little information is available on the number

of days target shooters, both handgun and long gun, and other people, such as skeet and trap shooters, off-duty police officers, the members of the military etc, spend on provincially approved shooting ranges. The chief provincial firearms office can only document two accidents in the last 14 years at Ontario-approved ranges.

All told, firearms are used legally and safely tens of millions of times annually in Ontario.

Our recommendations: It is not the legal firearm owner and user who is involved in crime, nor is the legal owner a source of firearms or ammunition that are used in crime. Yet violent crime that involves firearms still occurs in Ontario. The very nature of firearms and ammunition that makes them useful to legal owners and users makes them attractive to criminals, and the criminal misuse of firearms is often lethal. Further restrictions on the legal owner will not prevent or reduce criminal activity.

In the debate during the second reading of Bill 151, the member for St George-St David, Mr Murphy, noted that in 51 Division, an area that between July and December of last year had 460 weapons offences, the division was forced to reduce its foot patrols by 33% due to the social contract. Policing services should not only be exempted from the social contract, in our opinion; the province of Ontario should seek ways to increase the funding to policing services.

The recent creation of the provincial weapons unit announced by the Solicitor General is an appropriate and welcome addition to the existing law enforcement regime in Ontario.

The subject of plea bargaining was discussed during the debate on Bill 151 in the Legislature, and it was noted that the crown policy manual stipulates that criminal offences under section 85 of the Criminal Code should not be plea-bargained. They certainly have been over the years. The question remains: What about the other firearms offences under the code? In our opinion, none of them should be plea-bargained.

Yet the criminal element will still function in Ontario and further amendments to the Criminal Code are desperately needed. While the Criminal Code of Canada is beyond the purview of this committee or the Legislative Assembly, this committee and the Legislative Assembly can send a strong voice to the Parliament of Canada requesting amendments to the code, and we would encourage you to do so.

Needed amendments to the code that the OFAH requested during discussions surrounding Bill C-17 were a substantial increase in the mandatory imprisonment of criminals who use firearms in the commission of an indictable offence. The current one-year sentence is insufficient and should be increased to a minimum of three and five years for first and subsequent offences, respectively.

Mandatory sentencing of three and five years is needed for section 87 offences, possession of a firearm for the purpose of committing an offence, and for section 89 offences, carrying a concealed weapon, for first and subsequent offences.

Tough mandatory sentencing is also required for the

intentional possession of a prohibited weapon and possession of either a firearm or ammunition while prohibited by order, wrongful delivery of a firearm, importing a prohibited weapon and delivery of a restricted weapon to a person without a permit.

Further, these changes must be well publicized by all levels of government in Canada after enactment. We must send criminals a clear message that the criminal misuse and possession of firearms in Ontario will be strictly and harshly dealt with.

The major source of firearms that are used in crime is the United States, where most types of firearms can be purchased relatively easily and smuggled across the border. While Canada Customs is a federal department, the province of Ontario can encourage and support calls for increased surveillance and border crossing checks to help stop the flow of firearms from south of the border.

In summary, the issue of ammunition control is a difficult subject. Legal firearms owners and users are not the cause nor the source of criminal activity, but the proposal contained in Bill 151 to restrict the sale of ammunition unfairly targets these law-abiding citizens and will not reduce the criminal misuse of firearms or ammunition.

Bill 151, as it currently stands, with the inclusion of the Outdoors Card, hunting version, is much more preferable than a sole requirement for the possession of an FAC in order to purchase ammunition. The inclusion of the possession of a restricted weapon certificate and a minor's permit would further improve the bill, but I would remind you that even the inclusion of these four forms of identification will miss a good number of Ontario citizens who have a legitimate requirement for ammunition. Therefore, the current situation is certainly preferable to all legitimate firearms owners.

I would further remind the committee that legal owners and users of firearms in Ontario are already heavily regulated and controlled at the federal, provincial and municipal levels. There's no need to further restrict the legitimate firearms owner. Further restrictions on the purchase of ammunition are unwarranted and would not affect criminals. If a criminal is able to illegally acquire a firearm, it would be naïve to believe that ammunition will not be available similarly and make the criminal traffic in firearms and ammunition even more profitable.

Control of the criminal's access to firearms is the only method of crime control that will have any effect on reducing the incidence of firearms-related crime. It is on this basis, and on behalf of the legal owners and users of firearms in Ontario, that I urge the committee not to allow Bill 151 to proceed to third reading. As well intentioned as it is, we believe it is overkill.

Likewise, I would urge this committee to send a strong message back to the Legislative Assembly of Ontario, the federal Justice minister, Allan Rock, and the Canadian Parliament that criminals must be targeted with increased penalties and enforcement efforts, and not the legal owner and user with increased restrictions.

I thank you for your time and I would be pleased to answer any questions which may come forward.

Mr Winninger: I should point out at the outset that almost all other provinces also disallow grandparenting under Bill C-17, so we're not really out of step with the majority of other provinces.

Mr Morgan: There's good reason for that. Ontario has always been the leader in the training of hunters and in the hunter education program. Some provinces in Canada have never had mandatory hunter education, and of course they won't allow grandfathering. That's exactly why the federal government, in passing the legislation, included grandfathering, so that provinces such as Ontario that have always been leaders in safety training could take care of their citizens who've spent the time, effort and money to pass an exam and take a course, while those who haven't would not allow grandfathering.

Mr Winninger: That background is certainly helpful. As you know, on this committee we get a variety of points of view. Yesterday the Coalition for Gun Control presented very capably and left with us some statistics indicating that most Canadians killed with guns are killed with legally acquired rifles and shotguns, which appears to conflict. While the evidence and the statistics are somewhat scarce, they do quote a couple of studies, one by the Department of Justice, which indicated that most of those who are shot in domestic violence situations are killed with rifles and shotguns, and that most of the guns used are legally acquired. They show 78% of all guns used in fatal domestic assault situations are legally acquired, and they offer some additional statistics as well.

I'm just wondering how you reconcile that kind of information with what's alleged on page 3, that most fatal shootings don't involve legally acquired guns. How can you know that?

Mr Morgan: Clearly, our sources come from the Canadian Centre for Justice Statistics. I can't comment on the coalition's presentation because I haven't seen its statistics, but I'd be happy to.

Mr Chair, if I could, I'd be pleased to forward to all the members of the committee, through the clerk, the reports backing up the statistics that I've provided, and I would encourage you each to read those.

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Mr Winninger: It's just that at the bottom of page 3 you say the federal Justice department statistics did not record which segment of the 5% involved a legally owned firearm.

Mr Morgan: Correct. That is the information we have from those reports, and I will forward them for your perusal.

Mr Winninger: I just wanted you to know there is a contrary point of view.

Mr Morgan: We'll be glad to table the statistics, and you can decide their veracity.

The Chair: Mr Mills, there's time for one question. There's one minute. I don't know how much you can squeeze into that.

Mr Mills: One minute? That's pretty limited. Thank you, Mr Morgan, for coming.

I just want to tell you that about a month ago I was in

Port Perry, where I attended a massive meeting—and I believe the gentleman over there was there; I may be wrong—of the anglers and hunters association. All the statistics that you spoke of were presented. The meeting was on a Saturday night. It went on way late in the night, I think half past 10 or 11 o'clock, such were the emotions in that meeting. I can tell you that I share the view of your organization that somehow I think the wrong people are being targeted with this legislation. That may be contrary to what the Solicitor General's position is, but that's how I felt about it.

I'd just like to say that when I was given the opportunity to speak to them, they were on about locking people up and all this and the policemen etc. I send out a postcard to my riding and they write back what you're doing wrong, and everyone says, "Less taxes, less taxes."

So in deference to my colleague over there, you get one policeman on the street, you've got to hire three, because that's the way it works. So there's an enormous cost to that. They were most surprised to learn that you can lock a person up, but it costs \$70,000 a year. So you can't have your cake and eat it too. You've got to say to yourself: "What do I want? Do I want this level enforced, do I want this program or do I want less taxes?" I think it's a very difficult line to balance.

Thank you for coming. I enjoyed my meeting up there. I thought I was going to be eaten alive, but they were very friendly.

Mr Morgan: If I may comment in return, it's interesting that the whole taxation question often comes up when we have these discussions. One of the things I've made a point of doing is asking people who are always after more enforcement and greater penalties if they would be prepared to pay more for it. They say, "Yes, if the money was earmarked for that." I'm not sure how you as the decision-makers accomplish that, but yes, we all want fewer taxes, but I think if we were able to earmark it for increased enforcement and to make the world a safer place, we'd be glad to pay more for that. I suppose, give us the opportunity for a checkoff and the money will come forward.

Mr Chiarelli: Mr Morgan, thank you very much for your submission. I think it's very balanced and will be very useful to us. Quite apart from Bill 151, you indicated that this is a complicated type of issue.

I just wanted to very briefly explain to you what happened to me in my riding. I received a phone call from the owner-proprietor of a hunting-fishing store which sold guns and ammunition. He indicated to me, of course, that he took great exception to this bill. I asked him very clearly and specifically if he had any hesitation about selling ammunition over the counter to a 13-year-old, 14-year-old, 15-year-old or 16-year-old. He said he saw nothing wrong with that. If that young person came in and put the money on the counter, he would think it would be okay to sell that young person ammunition, lethal ammunition that will go into pistols or whatever.

So I guess my question to you is, do you think that's appropriate, particularly given the fact that, for example, in the case of the Ottawa drive-by shooting there were illegal guns which were used by young offenders but it

was legally purchased, store-bought ammunition? Is there an area there for government to deal specifically with ammunition, or are you saying we've got to solve the problem through other means?

Mr Morgan: I don't think there's any question that when you hear of, in this example, a 13-year-old purchasing ammunition, we all shudder a little bit at that. The world has changed from the days when I bought it at the age of 13 and went to the local target range and target-shot legally and there was no problem. But the fact of the matter is that if that 13-year-old has a firearm, he or she acquired that firearm illegally, and the source of ammunition will be exactly the same. If you put in place a system that requires some sort of certification, as abhorrent as it may sound, that person is still going to get that ammunition. It isn't going to change. In fact, I could argue that we may increase the black market in firearms and ammunition because we will force more people into that system and it will become even more profitable. That's terrible, but it is, I suggest, a fact.

Mr Chiarelli: You mentioned the cost of the FAC and hunting courses etc. If a type of identification could be created which would be useful for controlling the sale of ammunition at nominal fee or cost, do you think that would ameliorate the concerns of a lot of your members?

Mr Morgan: It's a matter of degrees. We would argue, I think fairly, that fee or no fee, since we're so regulated at the firearms end of things, the regulation at the ammunition end is unnecessary.

Having said that, to your credit, you've tried to address part of the problem by going beyond the FAC and including the Outdoors Card. We've suggested a couple of more ways that it could be made more acceptable. We believe they're all unnecessary, but having said that, if the decision is made to proceed, if you can include the hunting licence, the minor's permit, the restricted weapon certification and the FAC all as options within that, and ideally grandfather the FAC, then you will have gone a long way to addressing the concern. You will not have eliminated it, but you will have gone a long way to addressing it.

Mr Murphy: One quick question. I have received a number of phone calls from chiefs of police in Brant, Sturgeon Falls, Toronto and a few other places indicating a general support for 151. I represent a downtown riding, so obviously I'm speaking from that perspective. They've expressed to me two things they would like to see in here, and how it gets done they don't really care.

They would want a photo identification of some sort—some said the driver's licence might be sufficient—and they wanted a log of purchase filled out by the seller as a way of tracing, to assist them in investigations. If it was only a driver's licence but there was a log of purchases, what would your reaction be?

Mr Morgan: The driver's licence would add a whole bunch more people to the list that would be covered by the things we've already talked about, but it would still miss some people. In terms of the log, that's not something we've discussed. As we sit here, I don't see a problem with that.

Incidentally, the police chiefs have been very forthcoming in making their opinions known. We have a large number of members who are not police chiefs but are policemen. What they're saying to me, is a little different than what they've said to the previous speaker, but what they've said is that the regulation in terms of the sale of ammunition isn't going to do anything. They have said we need to put people in jail and keep them there, because they're tired of having charges dropped when they lay them; they're tired of having people let out early. Their message, that man-on-the-street message, certainly has been different as it's been presented to me than I hear reported from various police chiefs.

Mr Murphy: On what you've said, they clearly say that to me too.

Mr Harnick: One of the very difficult aspects about this bill is very much the difference in culture when it comes to the use of firearms within a metropolitan area, a built-up urban area, and a rural area. We have those kinds of discussions in this Legislature regularly, where metropolitan members will take a very strong position on certain things and it's just totally abhorrent to the rural member who says the use of firearms and ammunition is a way of life in many respects for sportsmen, for hunters, for anglers, for target shooters.

1700

We really, I think, have to try to strike a balance so that those who lawfully possess firearms are not facing the brunt of gun control, because they're not the ones who are in breach of the law. How do you do that? How do you strike that balance so that you do have realistic controls without penalizing people who, lawfully and with great knowledge, possess and use firearms?

Mr Morgan: I'm a person who has lived in both environments, the rural Ontario environment and the Metropolitan Toronto environment. I spent over half my life living in this city and I think I have some understanding of the differences in attitudes, but I can also tell you that the real attitude towards crime doesn't change. The attitude towards firearms changes a little bit but the attitude towards crime does not. I hear the same thing everywhere I go, and that is, "Crack down on crime."

When we ask people about, should there be more gun laws, the initial reaction by the uninformed is, "Yes, there should be." But then when you ask them, should there be this control or that control, controls that are already in place, they say: "Yes, that would be a good idea. Let's put that in place."

People don't understand how restrictive Canada's gun laws already are, but they do understand that our crime laws and our system and our enforcement are lax. The common ground right across Ontario and across Canada is that we have to start directing the laws against the criminals and we have to increase the penalties against the criminals, and we've addressed that in this paper. I suggest that if Ontario and Canada were to do more in addressing those things, a lot of the problems that surround the misuse of firearms would disappear.

Mr Harnick: Do you believe that this ammunition control bill will, in any way, deter criminals?

Mr Morgan: No.

Mr Harnick: Okay. I appreciate that.

The Chair: Thank you, Mr Morgan, for your presentation and for taking the time to depute today.

CANADIANS AGAINST VIOLENCE EVERYWHERE
ADVOCATING ITS TERMINATION

The Chair: Mrs Priscilla de Villiers, we welcome you to this committee again—on a different matter, of course.

Mrs Priscilla de Villiers: Mr Chairman and members of the committee, thank you for allowing me to appear before you today. I am Priscilla de Villiers, president of CAVEAT, a national incorporated not-for-profit organization. Our mission is to contribute to the creation and maintenance of a safe, just and peaceful society. There is an information appendix at the back of the brief.

It is our submission that the government of Ontario can and should play a significant role in the control of the sale of ammunition, which is just one facet in addressing gun control in our province.

The sale of ammunition can be divided into three areas:

(A) The retail sale of ammunition: In a province where great concern is expressed about the use of weapons in the commission of crime, as well as the alarming rise in illegal weapons smuggling, there's a contradictory message in the uncontrolled sale of ammunition. This should be an easily controlled commodity:

(1) No person under the age of 18 should be allowed to purchase ammunition.

(2) No sale of ammunition should be completed without the relevant identification to show proof of age, FAC and/or hunter's licence etc.

(3) All sales of gunpowder should be prohibited. We see no reason for private citizens to have access to such a potentially lethal substance for any purpose, especially for making ammunition.

Ideally, the government of Ontario should institute a progressive plan of registering all guns to specific owners. This could be quite easily done if one used the technology which is in place to register motor vehicles. In the same way that one receives an ownership number for each vehicle one possesses, on a similar document one could receive a number for each firearm one possesses. In addition, your photograph and ID are built in. This would control the cost, which has been brought up a number of times.

It would then become increasingly possible to control the sales of ammunition so that only the legal owner of that particular make of firearm would be able to purchase the appropriate ammunition. All retail sales of ammunition should be registered, together with a number of the weapon in the name of the owner, so that you have the same way that pharmaceuticals are registered. If there's an abuse, it becomes obvious.

For this to be effective, there would have to be stringent penalties for buying ammunition for another person with no legal right to that ammunition. An effective way to monitor the system would be to make the owner of a weapon responsible and liable in addition to the perpetra-

tor if there were a crime, accident or fatality committed with the weapon. Furthermore, the owner would never be allowed a gun permit again. This would do away with policing and all the rest of it. If there is safe handling, the matter would not come up.

Public confidence in the courts' ability to uphold legislation is eroding. To restore confidence, there should be an automatic penalty for the illegal purchase of ammunition as well as an automatic penalty for carrying a weapon in the commission of a crime. I said earlier that we would probably only know that ammunition had been purchased illegally if there were a fatality or a crime, so that this would not overload the court system. The importance in this paragraph is that there's a clearly understood penalty.

Although this is an enormous task which would have to be tackled over some years, it's essential that we start monitoring the number of guns which are legally circulating in our society because of the huge proliferation of smuggled weapons. If a smuggled weapon is discovered, it should be destroyed. It's been brought to our attention that a large number of hunters' rifles have been sold in this country which have no registration number. The problem could be tackled in two ways: either to note the make and year on a registration certificate or indeed to assign a number arbitrarily for administration purposes.

The registration of all weapons legally in circulation would have a number of advantages.

(1) A stolen weapon could be more easily traced and returned to its owner.

(2) It would assist police in responding to the scene of a crime where violence is involved if they had an idea of how many guns that were there. This is specifically true in the case of domestic violence.

(3) People who used illegal weapons could not casually obtain ammunition, as seems to be the case in many youth crimes, and you mentioned the Ottawa shootings earlier.

(B) The private sale of ammunition is extremely difficult to control. But here, again, if the onus is placed on both the seller and the buyer for any crime, accident or death which resulted from the transaction, there would be a double onus and it would be self-monitoring. You wouldn't be hounding most of the legal gun owners; only if there was in fact a transgression.

We recognize that in both the retail and private sale of ammunition we're controlling the access of the registered gun owner to ammunition. "Gun control is a highly divisive issue that pits the citizens who believe that the right to own guns for legitimate purposes is constitutionally guaranteed against those who want to sharply reduce the number of guns in circulation." That's from *Business Weekly*, which of course is a United States publication.

Such control would serve two purposes.

(1) Ammunition is a controlled substance, as it were, and not readily available on the open market.

(2) It underscores the current thinking of our society that the right to own a gun is a privilege and not a right, that strong measures must be taken to protect society and

that personal liability is involved in owning or carrying a gun.

I might say at this point that the previous speaker spoke very passionately. I've heard those arguments before. Our concern is that many people who legally own guns do not belong to responsible gun clubs and so on. Many people buy them and use them casually and do not have the same controls and the same training.

(C) Ammunition purchased outside the province or the country: We recognize that one of the dangers of strict control of any substance, including weapons, is that it will force both the sale of guns and ammunition underground. This is generally agreed on. However, we call on our provincial government to give a strong message in Ontario that illegal trading in weapons and ammunition is a criminal act and will not be condoned. Any ammunition or weapons seized in the commission of a crime which were purchased outside the province or the country could automatically be destroyed if they were not legally registered here. The key to effective control of illegal weapons and ammunition entering this country is the border protection that the federal government provides. In our opinion, this alone makes for effective control of ammunition and indeed weapons which are manufactured outside the country and brought in illegally.

1710

In a submission made by CAVEAT to the standing committee on justice and legal affairs on killer cards and board games, Bill C-80—that's the federal government—we stated that: "In enacting amendments to legislation, it is essential to look at the possibilities of practical enforcement if this is not to be a paper service which pays lipservice to the issues but has little practical validity. We in CAVEAT have been concerned about the glaring omissions in Canada's border protection. This was one of the main areas of examination in the Yeo inquest.

"In a recent report card that CAVEAT presented at Queen's Park, we graded the response of the Minister of Revenue to the recommendations of the coroner's jury which clearly identified grave concerns about the effectiveness of Customs and Immigration at protecting our borders as an F for fail. These recommendations were validated in the Ekos report which was commissioned by the Department of Immigration in 1992 to study the effectiveness of the primary line of inspection"—that means customs.

"It cited the critical need for customs officers to have a clear mandate, better tools and more training. A study period of six weeks showed that over 50,000 people who should have been referred for secondary questioning were missed entirely"—and that is in two airports. "The customs union itself estimates their success rate in stopping contraband goods at between 1% and 10%." I've got a transcript of evidence which I've put in for the Chairman.

The government of Ontario must urge the federal government to:

(1) Assist in and promote the registration of weapons and control of ammunition sales in all provinces.

(2) Look into the questions of border protection. The

conclusion of the standing Senate committee on banking, trade and commerce stated that the committee "felt there were legitimate concerns raised about the safety of our borders," and made four recommendations to the Department of Revenue. See our appendix 2. In addition, the Senate committee urged the Senate to refer the issue of illegal importation of weapons into Canada to an appropriate committee for study. This was in response to CAVEAT's submission on the lack of protection of our borders, and those recommendations are included. The full transcript of that I have given to the Chairman for your information.

The Attorney General of Ontario must report back to the Legislature within six months to report progress on this extremely serious issue. I might add that we can, by extension, add drugs etc quite happily into this list.

If anybody would like a copy of the Ekos report, it's obtainable from the Department of Immigration. It's a 1992 report.

CAVEAT's mission is to contribute to the creation and maintenance of a just, safe and peaceful society by public education, advocating changes to the justice system and ensuring the rights of victims. We will do this by assisting in the creation of a system in which all participants are both responsible and accountable in ammunition and gun matters, as in every other matter, for their actions and for providing public forums for education and for public input with respect to violence in our society. Since our inception, we, as a community-based group, have taken a supporting role in many public initiatives already in place. In a small way we have formed partnerships with other community-based projects.

In a submission to the standing committee on justice and the Solicitor General on crime prevention in 1992, we stated:

"A brief on crime prevention is a daunting task, akin to solving the problem of world hunger. Its complexity mirrors most of the facets inherent in the human condition," and we have heard some of them today: the plea of victims to be kept safe, particularly in domestic violence, and the plea of legitimate gun owners to practise their hobby or their craft. "While our focus is clearly on violent crime, it is reasonable to assume that those measures which might reduce or prevent violent crime would likely be effective in reducing all forms of crime. While we may not be able to eliminate crime, we might conceivably create an atmosphere inimical to violent offences."

That is part of the reason that we need to make a clear stand on our attitude to weapons in our society.

"We feel that CAVEAT could help raise public awareness of the role that our society has played in fostering a tolerance of the violence which is now increasingly being acted out against the...members of our community."

To this end, I just put in a small part of a submission to the Royal Commission on Learning. It's there for your information. This is the work that we're doing in schools.

We have addressed some of these concerns we're raising today in a youth challenge, and we will be

holding a second one. We catered to 850 students, I think, this year from about 80 schools, and the ripple effect has been remarkable. So we are trying to raise awareness in youth about the problems of weapons in school, of danger and various other problems such as youth suicide, which, I'm sad to say, is still top of the list of any youth study about what concerns them most.

Once again, I won't read this whole thing. Weapons unfortunately are the leading factor still in suicide, possibly because they're handy and possibly because they're immediate, and very often, if not fatal, cause extreme injury.

I represented CAVEAT on the Ad Hoc Committee on Crime Prevention and Community Safety in 1993. Representatives of that community group and justice departments from across Canada discussed these issues for several months last year. The hard-won consensus—and it really was hard won; there were people representing every conceivable area of interest—is synthesized in a report the federal Justice department released in 1993.

Please find enclosed some of the recommendations pertinent to that committee on community action and crime prevention so that you could start some discussion there. I didn't want to take up your whole time with that, but a few of the relevant parts I've photocopied for you. If you'd like the whole document, it is available from the Department of Justice. Thank you very much.

Mr Chiarelli: Thank you, Mrs de Villiers, first of all, for your leadership on the issue generally and with CAVEAT and for the work you're doing in the community on these issues. I think it is making a difference.

My first question to you is not too specific, but it's to try to get from you, understanding the work you've been doing in the community, what you feel the public mood is on these issues. Is there a sense of frustration and cynicism because there seems to be a consensus in the public and governments just aren't responding specifically? What do you sense is out there with the public on these issues you're addressing in your paper?

Mrs de Villiers: I think the reason CAVEAT started was exactly because there was an enormous frustration and a feeling generally expressed right across this country to us, when my daughter was murdered—not only did we receive cards and phone calls and so on, many thousands, expressing concern and great care and in fact sending us incredible gifts to assist us to get through that time—but the consistent theme throughout was: "We are so frightened. What can we do? Can't you help us?" I thought that was a most inappropriate time for people to ask me to help them, because it really started right when Nina hadn't even been found.

1720

But what was borne on me—in fact, I said it one day very irritably: "Don't tell me, tell your government." Suddenly I realized that generally people did not feel they could tell their government. That is the bottom line. That petition CAVEAT started was really that, a vehicle for ordinary citizens to speak to the federal government. It was never meant to run for more than five weeks; it was meant to be a small gesture.

Since then, as I travel across the country, I'm deeply concerned at the level of anger. It's reaching proportions which I think are quite dangerous. I personally have an absolute terror of vigilante behaviour because I come from South Africa. I've seen what happens in riots. I've experienced it. In fact, there was open vigilantism in Burlington when my daughter was missing. Over 1,000 people came to a meeting where the police chief had to say to them in very clear terms, "We will not tolerate this sort of mood." We were desperately afraid, my family and I, that somebody, just because they looked odd, would in fact be torn limb from limb. I'm hearing this message across the country.

From the point of view of guns, the Alberta Mother's Day rally that I attended in Edmonton, which was a radio link between Edmonton and Calgary, was the biggest rally ever held in either city in the history of Alberta, I believe. The level of anger there was enormous at the Young Offenders Act. I could go on. There are any number of these.

I suggest that the whole question of guns is polarizing this society. I understand that it can be perceived by the legitimate gun owners and people who belong to gun clubs and take every precaution that they are bearing the brunt yet again, and I sympathize with that.

Mr Chiarelli: I think most elected officials at all levels of government, in all parties, have come to an appreciation of the anger and the frustration of the public and are looking for ways to act.

It's obvious from your paper that you have an understanding of the divided jurisdiction between federal and provincial governments in this area. It's with our more limited jurisdiction in mind that we introduced Bill 151, which was the bill to control the purchase and sale of ammunition. We've heard that it's probably constitutional for us to pass that type of bill, perhaps with a couple of changes to it. We also heard from officials of the Solicitor General that they would prefer the federal government to get involved, for a number of reasons, and to let the provincial government step aside from getting involved in this issue.

We also heard Scott Newark today, from the Canadian Police Association. I wrote down a quote of his: "Ontario should pass this bill and be a model for the federal government and other provinces. Ontario should take a leadership role."

Do you think we should get on with Bill 151 and pass it or do you think we should just recommend, separate from that, for the federal government to take some action in this area?

Mrs de Villiers: I would urge you to take the leadership here. I have been extremely frustrated from the day my daughter disappeared. Where I learned this whole thing first hand was that I was told by the then Attorney General of this Legislature, "We don't make the laws, we just enforce them." I contacted the Justice department and they said, "We don't enforce the laws, we just make them." That, quite frankly, I find untenable.

I would only hope that each level of government would take responsibility for what it can do and then

push really hard—Ontario has a huge population and a big voice—and assist us as we pound on the gates and say, "We have to do something." I urge you please to take the leadership role, and then at least we can go with one positive. Whereas if each person stands back politely and says, "Not me; it's you first," we're going to be here in five years' time. I can absolutely guarantee it.

Mr Chiarelli: You mean take a leadership role by passing this type of legislation?

Mrs de Villiers: And show that you are prepared to stand up for this, and then one can take that further.

Mr Harnick: I have some trouble with this debate, because I think we spend an awful lot of time focusing on the wrong things. When I listened to the presentation before yours and your presentation, there's a balanced reality in everything that's said. If we focus on this debate and try and find the perfect way to regulate guns and ammunition, I think we're missing the whole point about the real danger that continues to go on day after day, that our borders are unprotected, that thousands of guns and rounds of ammunition are coming across the border daily and nobody's doing anything about it.

We can sit here and pass an act that really is going to be under the rubric of the Provincial Offences Act, but it seems to me that the really important issue here is that if you want to control guns, particularly guns that are coming in illegally because those are in all likelihood the guns that are going to be used in committing crimes, why are we sitting here as a province, with border crossings in Cornwall and Niagara Falls and other locations, doing nothing about it?

Mrs de Villiers: I'll tell you, I have been beating my head against the Ottawa ramparts for the longest time, and this year I found myself having to go to a Senate committee on banking, trade and commerce. They looked as surprised to see me as I was to be there. The reason is that customs is now under their aegis. I said to the senators: "It's ridiculous that I should be speaking to you. I don't know where else to go."

Quite frankly, I've been everywhere, and I don't get replies to my letters. It is a very critical situation. It's borne out by the Ekos study, a government-commissioned study that was buried and then somehow surfaced and we were given it. It's extremely serious. You can ask the people in the field and you can look at independent studies. This is a huge problem.

The reason I think it's important to do something in the province is that we need to give a clear message, even if it's "only"—and this is a big only—to the youth of our province, that this is a very serious matter, that carrying ammunition to school to show off to the kids is not acceptable. It's to try and develop a standard in the province. I personally see it as that. Also, every now and again, possibly one could make a point about the responsibilities that are accrued by owning a weapon and by using it.

But in the long run, you're absolutely right. That's why I focus so much on that. If we don't get the support in our border control, we will not manage it. It's very, very serious.

Mr Harnick: I've looked at your jury summary notes and I've also looked at the standing Senate committee note.

Mrs de Villiers: Please feel free to see the full report.

Mr Harnick: It just seems to me that if this committee is going to do anything to significantly affect gun control in this province, it's not more regulation and telling more law-abiding citizens, "We're going to put more red tape in the way of you doing something that's not harmful to anybody," but it's really to get at the major source of where this problem is emanating from.

It seems to me that we as a provincial Legislature obviously can't enact laws that aren't within our jurisdiction, but we can sure start to use some of the methods we have to say to the federal government—after all, we do have an Attorney General in this province; she obviously speaks to the Minister of Justice—that this is just not acceptable.

Mrs de Villiers: I wish she would.

Mr Harnick: I can't conceive that after all the material you've produced, no one is doing anything.

Mrs de Villiers: Well, I've provided them.

Mr Harnick: I will tell you that every witness who has come here has recognized that the problem isn't really gun control or ammunition control. The problem is what's going on at our borders, because that's the source of most of the illegal weaponry, and nobody's doing anything about it.

Mrs de Villiers: I would agree, except in one issue. I do think it's absolutely unacceptable that a young person can walk in and buy ammunition. I feel we have to have some control on the sale of it.

Mr Harnick: No, I don't disagree with that at all.

1730

Mr Mills: Thank you, Mrs de Villiers, for coming here this afternoon. I want to take you to the first page of your presentation, under paragraph 3, and you say: "All sales of gunpowder should be prohibited. We see no reason for private citizens to have access to such a potentially lethal substance for any purpose, especially for making ammunition."

Canada recognizes skeet shooting as an Olympic sport. In my riding of Durham East there are number of skeet shooting clubs. Through my association with the members of that club, I know they have the mechanism and the materials to make their own shots. This makes their participation in skeet shooting economically possible, because they buy the packages, they buy all these things, they've got a machine and they make them. Without being able to make that ammunition, I doubt very much if they would be able to engage in that sport. With all due respect, do you not see that recommendation as being somewhat draconian vis-à-vis the people who use this sport as a hobby and make their own ammunition?

Mrs de Villiers: You're absolutely right. I'm sorry, I didn't phrase it well. What I meant was in a domestic situation—you know, at home. My father shot skeet for many years so I'm very familiar with it, and I grew up with guns, so this isn't a mystery to me. I have been

appalled, however, at being shown huge tins of gunpowder in private homes. Certainly, within a registered club, in a controlled surrounding where there's proper control of the substance and where it can be locked away, I personally would have no objection to that.

However, I think there's a grave danger of it being in private homes and in private hands: (1) children experiment with it, (2) things like pipe bombs etc, and (3) I don't think it needs to be out in the public domain. Certainly, within that sort of setting, I quite agree with you. So read there "domestic," if you don't mind, "in a domestic site." In a controlled situation, I have no objection.

Mr Winninger: Just a brief clarification. On the next page you describe how an owner of a firearm could be made responsible and liable if there were a crime or an accident or a fatality committed with the weapon, in addition to the perpetrator. I think I know this model because it's the same one that applies to motor vehicles. There's always a caveat, if I can use that term, that it has to be with the owner's consent. I just wondered whether that was what you were contemplating here. If someone steals my firearm, should I still be held liable and responsible, or would the consent defence prevail?

Mrs de Villiers: You're absolutely right. If you properly secure and protect your firearm and it is stolen in spite of that, obviously you cannot help it. I was thinking totally of motor vehicles because I was trying to show that there is a precedent in our society, that I, as a law-abiding motorist, am continually hemmed in by all sorts of rules that shouldn't apply to me, I don't think.

The caveat here is that, obviously, if you fail to look after your gun and it's stolen, then I would suggest you're liable, if it's not properly secured. But really I was thinking of if you lend a gun to somebody. It's that whole idea of the private transfer. You don't need a policeman watching every hunter in the field. However, if you as the owner of one type of weapon lend it to another person and there is a fatality, I suggest there should be some sort of onus. Obviously, this would be taken under advisement by the court as well. No, certainly if it's stolen there's nothing you can do.

The Chair: Mrs de Villiers, we ran out of time. We thank you for appearing before this committee and we commend you for your ongoing community activism.

Mrs de Villiers: Thank you very much.

The Chair: Before the committee adjourns, we need to talk about report-writing.

Mr Chiarelli: I volunteer.

The Chair: We'll take suggestions from the members about how to proceed.

Mr Harnick: I think we should get a summary of all the evidence and spend some time reviewing it by way of what our priorities for recommendations are.

The Chair: Could we have that by Friday?

Mr Harnick: I move we have it on Monday.

Mr Andrew McNaught: For the meeting Monday. I don't know if it's going to be here on Friday.

Mr Chiarelli: I don't think we're mandated to restrict

any suggestions or recommendations for action to what we've heard from people who have made submissions. We referred to it before when we were looking at organizing the committee, that indeed we're mandated to come up with a report to the Legislature for action within the mandate of the resolution.

I agree with the suggestion that we should have a summary of the submissions, perhaps a summary of specific recommendations coming out and assigning them to the presenters, but I think we should also be prepared to come to the report-writing stage with our own agendas, so to speak, to share with each other. I'm thinking in terms of your particular papers that you put out, our paper that we've put out, which is suggested is a complete plagiarism. But if that's the case, maybe we can come to some consensus on this side about what should be in it, and certainly from the point of view of the Solicitor General and the Attorney General's perspective, I'd like to see the government come to the table with specific recommendations and not just: "See what we're doing? Isn't it great?" I'd like to see next steps which can be taken from the government's perspective as well.

I'd like to see us throw it all into the hopper for a day and then perhaps come up with some consensus for action. We still have to decide how or if we're going to deal with Bill 151. As we can see, there's some mixed reaction to it, but certainly some significant support as

well, and we may want to decide what we want to recommend to the Legislature with respect to Bill 151.

Mr Harnick: I agree.

Mr Winninger: I haven't had a lot of time to devote to this, but it would seem to me that the first step is to get the summary and to review it, as Mr Harnick said, and then to govern ourselves accordingly. There will have to be some discussion here at the committee, and that can't take place until we get the summary.

The Chair: I would urge Mr McNaught to finish the summary as quickly as possible, hopefully for Friday, to give time to the members to review that. We would then move to the next step, which is what Mr Chiarelli was suggesting, which is that with that summary, we would be prepared, based on our own thinking, to come to the committee on Monday and decide how to deal with that. That would be very useful in terms of the preparation for the Monday meeting, so we don't begin fresh on Monday as opposed to other pre-thought that should go into that, including inviting, as we said in item 6, the different ministers to attend and participate in the report-writing stage of the committee's considerations.

So hopefully for Monday all of us will be prepared to make an active contribution to the writing of the report.

Thanks very much. We adjourn until Monday at 3:30.

The committee adjourned at 1739.

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de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 13 June 1994

**Journal
des débats
(Hansard)**

Lundi 13 juin 1994

**Standing committee on
administration of justice**

Draft report
Control of ammunition
and community-based crime
prevention initiatives

**Comité permanent de
l'administration de la justice**

Rapport préliminaire
Contrôle des munitions
et des initiatives pour
la prévention de la criminalité
à l'échelle communautaire

Chair: Rosario Marchese
Clerk: Donna Bryce

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 13 June 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 13 juin 1994

The committee met at 1545 in room 228.

DRAFT REPORT

CONTROL OF AMMUNITION
AND COMMUNITY-BASED CRIME
PREVENTION INITIATIVES

The Chair (Mr Rosario Marchese): Just as a brief summary, we had agreed that the researcher would do a summary of recommendations, which you have all received, and that each caucus would come back ready with its own ideas or recommendations and start working on the report today. That's what we said we would do, so I'm in your hands.

Mr Gordon Mills (Durham East): I have a document that's been prepared based upon the presentations. Our caucus has endorsed this, and at the back of the document we have made seven recommendations.

In the interests of expediency, I suggest that we would table our recommendations and our report with the research officer, who in turn hopefully would look at the same sort of document from the other parties, and then we would be looking for a draft copy of a report that we could look at before we come back into committee tomorrow afternoon; say at noon that we could see this.

The Chair: Do the different caucus members have anything to submit by way of suggestions or recommendations? Obviously, we haven't shared that; we were going to do that today.

If you have things to submit to each caucus so we can all look at it, I suggest it would be in our interests to come back tomorrow and deal with this as opposed to taking the time it takes to read the recommendations or for each caucus to read its own stuff. It might make it a little more difficult. We could do that if you're ready to do that, or, as I suggest, pass on the different recommendations to each caucus to read and come back tomorrow prepared to do the writing of the report.

Mr Mills: We have the report before us from the legislative research. I'm just wondering, if the other parties have a written response, whether all the written responses could go to that research service to then come up with a report we could read tomorrow, to make the discussion perhaps more meaningful and more to the point rather than go through this document which doesn't really make any recommendations at all; it's just a synopsis of the things that were said.

The Chair: I hear the suggestion you're making. Let's listen to the others and then see.

Mr Robert Chiarelli (Ottawa West): I made the suggestion last week that we table a number of docu-

ments before we start drafting a report, and I suggested that one of the documents be the summary which the researcher will have prepared from the recommendations and the submissions. The Progressive Conservative Party has a policy document on the issues that are included in the motion, and I suggested also that they table that, and that we table our Safe Communities paper, which has a number of specific recommendations. I suggested also that the government table some specific recommendations. All that, basically with the plan that we would sit down and do some cherry picking and create some suggestions for action as MPPs which we can have a consensus on from the documents we've been working so hard on over all this time. I think that's a very reasonable suggestion to make.

We have Bill 151, the ammunition bill, which has been, according to my assessment of the researcher's paper or compendium, very well received. It's definitely constitutional, supported by a range of people. I think we have some good fodder, some good ammunition, if I may, to create a report, and I think we should do it in a non-partisan way. We not only can, but I think we have an obligation to report something back to the Legislature that's doable and doable now.

I don't think people are expecting us to recommend further study, further reviews, further reports. They want an action plan. We're here to do it. We have a Conservative document, we have a Liberal document, we have a committee document, we have a document that's going to be tabled by the government representatives. Let's put them all on the table and let's start, at least initially, seeing where there is a broad consensus and include those in our report, and then perhaps we can debate some on which there is not as broad a consensus. I think that's the way we should proceed. We have an obligation to present an action plan to the Legislature, and we should sit down, roll up our sleeves and do it.

Mr Mills: I agree with the substance of what Mr Chiarelli has put forward, but I would like to remind members of the committee that it is my understanding that the mandate of the committee was to deal with ammunition and guns, and I would not want to have the Conservative Party's policy document—whatever that agenda is that they've got—introduced as a document. We're really tasked with looking at guns and ammunition, and I would hope those parameters are kept to.

Mr Chiarelli: And community policing. Our mandate is community policing and ammunition.

The Chair: The title says Control of Ammunition and Community-Based Crime Prevention Initiatives is the

basis for all of this. Mr Chiarelli, you were saying much of what I was trying to pull together as well. We'll get all of the different policy statements you all have, and people can read them for tomorrow and be prepared to come to some agreement on things that relate to this initiative. Is that all right?

The other suggestion, that Mr Mills made, was that Mr McNaught get all the different reports people have, attempt to see what agreement there is in the three policy statements or recommendations people have and put that into some kind of order, if possible, and we might be able to use that as the basis for a discussion. That might work out, to use that as a working paper.

Mr Mills: That was my intention, Chair.

The Chair: But that might not be the sole paper. It could be just a working document, and other members may have other things to add, of course.

Mr Tim Murphy (St George-St David): I haven't had the opportunity to see what Mr Mills is going to be tabling. I don't know how long it is. It may be that we can read the recommendations fairly quickly now. I just don't want to waste the whole day.

The Chair: People have to read your document as well, and the Conservative members have a document.

Mr Murphy: But we do have a specific bill, which is Bill 151, and we've been discussing that. People have a sense of the bill. We may be able to do some work on it, in terms of some of the community-based crime prevention. Stuff broader than the ammunition bill may require further discussion and thought once we see the papers, but on the bill, people have had the bill for weeks.

The Chair: That's fine. I think they're ready.

Mr Chiarelli: I think we should be very clear on what's before us. The House leaders debated actually referring Bill 151 to this committee, and the government in particular was not interested in having Bill 151 dealt with as a bill. Instead, the motion included the general subject of ammunition purchase-and-sale control.

I think it's open for this committee to recommend to the government, the Solicitor General and the House leader that Bill 151 as a bill be referred right back to this committee and we have the summer to deal with it.

I say that because when questions were asked in the Legislature of the Solicitor General, his main concern was the constitutionality of the bill. We have two constitutional experts who were selected independently by the clerk of the committee who have come before the committee to say that it is constitutional, that we have the authority. That's number one.

Number two: We have a range of witnesses who have come before the committee, including the Canadian Police Association, Metropolitan Toronto Police Force, the Coalition for Gun Control, CAVEAT and a number of others, who have very strongly indicated that the province should take a leadership role.

My concern, and I hope the government members can give us some feedback on it, is that the only representatives of the Ministry of the Solicitor General who came before us, that's the chief provincial firearms officer and two other officials from the Solicitor General, clearly said

it's constitutional but also clearly said that in their opinion they would prefer that the federal government take the leadership on ammunition. I take them as speaking for the Solicitor General and I'm very concerned that the Solicitor General is going to want to try to slow down or not take the initiative or leadership on the question of ammunition purchase and sale.

I would like somebody on the government side to indicate to me whether the three representatives from the Solicitor General's office who were before the committee and spoke against the province taking the leadership on this issue were speaking for the Solicitor General.

The Chair: You're asking a question and you're soliciting an answer, I suppose. I'm not clear. Or are you just making a statement?

Mr Chiarelli: I'm asking a question of the government whip or the parliamentary assistant.

The Chair: All right. Before we do that, it's important to have a sense of what we're going to do for the day. Mr Murphy is suggesting that perhaps we might begin, and we could. You may want to share the documents, in which case we should make copies. We could either begin by asking questions or talking about different things that people can respond to, or share the documents. We should decide what we're going to do for the day. Mr Harnick, do you want to offer an opinion on what direction you want to take for the day?

Mr Charles Harnick (Willowdale): I don't really care; whatever the consensus is sounds reasonable to me.

The Chair: Do we want to make copies of whatever document you have, Mr Mills, and whatever document you have, Mr Chiarelli? Should we do that meantime?

Mr Chiarelli: Plus Bill 151. Presumably you should circulate Bill 151 as part of our document.

Mr Mills: Is Mr McNaught going to copy all of it and try to do what I asked, consolidate something?

The Chair: Mr Murphy suggests that we might begin this discussion today. If so, I'm not sure how it fits with what Mr McNaught could do for the following day.

Mr Mills: The discussion that would follow from this information coming back would be much more productive than going at different odds here this afternoon. I'm trying to make it more concise and more relevant to the committee in the discussion. It would be much better if we had it all before us rather than picking out pieces as we go along. That's my opinion.

The Chair: Mr Chiarelli, his suggestion is still that it's best to circulate his document and this. Does the Conservative member have a copy of something he wants to submit for this committee?

Mr Harnick: Would you like me to get a bunch of those and deliver them? I'll do that.

The Chair: Charles, what I'm asking is, if we're going to do this for tomorrow and if we're asking Mr McNaught to try to pull something together, then we'd be all right for tomorrow.

Mr Harnick: Let me get a copy so we can read them.

The Chair: So we can read them and he can do some of the work.

Mr Harnick: How many would you like?

The Chair: Enough for the members and a few for Andrew, 10 or so. Do we want to do that, or do you want to just have some back and forth discussion right now on some issues you've raised?

Mr Chiarelli: Perhaps what we should do is have a brief discussion so we can get a sense of how we're going to approach the actual writing, notwithstanding what's in the documents substantively. Assuming that we read them and have some ideas about what should go into an action plan, what are we going to be doing, how are we going to organize ourselves tomorrow when we come back?

Mr Mills: We want to know what we're doing. You want an action plan.

Mr Chiarelli: How are we going to create that action plan? In other words, how will we conduct ourselves tomorrow to get to an action plan?

Mr Mills: It would add to the quality of the discussion if we had this report back with all our comments in the record, the way this is, so we could focus on things rather than go willy-nilly. The subject matter is very limited and concise that we discussed, and that's why I'm trying to get the focus on what we're here for.

The Chair: Do you have any other suggestions as to what Mr McNaught could be doing in terms of the breakdown of it?

Mr Chiarelli: I was going to ask both the researcher and the clerk for some suggestions, based on experience in other cases, about what they might suggest as an appropriate way to proceed. Did the clerk hear the question?

The Chair: The question is on past precedents in terms of how we might proceed.

Clerk of the Committee (Ms Donna Bryce): I don't think there are any precedents. They can give direction to the researcher to come back with a report or they can sit down and write one themselves. Normally, it's the researcher.

The Chair: Mr McNaught, do you have any suggestions in terms of how we might proceed, based on your expansive experience?

Mr Andrew McNaught: I'm afraid I don't have a sense of what the committee wants, what the positions are on the various issues that were raised. I could try to be a mind reader and draft something that I think everybody would be agreeable to, but I'd be guessing at this point.

The Chair: Mr Chiarelli, once we read each other's material we may have a sense of what we could speak to, and it might take more than tomorrow, obviously, to put the action plan together. But I think it would be helpful to have something in front of us that we've all read and looked at, and based on that, tomorrow we might have a sense of what we might do subsequently. Mr McNaught could try to put something together based on what agreement there may be in the three documents.

Mr Mills: We could all agree on some things, couldn't we? Is that possible, Tim?

Mr Murphy: I am always hopeful, on many issues.

The Chair: Are there any other suggestions in terms of what else we might do for tomorrow?

Mr Chiarelli: Are we scheduled two days next week on this as well?

Clerk of the Committee: The 20th and 21st.

Mr Chiarelli: So we'd have three days to draft, and discussion today.

The Chair: If things break down tomorrow, we may have to have a subcommittee to discuss what else we can do.

Mr Murphy: Part of the problem is that without knowing how much of a fight we're going to have, if we all speak in a vacuum—

Mr Chiarelli: The government controls the agenda.

Mr Murphy: But any partisan issues aside, without having a sense of what the government is going to say yes to—

The Chair: Mr Mills, do you have a copy of something they could peruse very quickly? Can we make some copies immediately?

Mr Murphy: A five-minute read of that might let us have a much better sense of what it is we'll be talking about.

Mr Chiarelli: How many letters do we have to send to the federal government?

Mr Mills: What should be on our minds too is that a lot of the witnesses who came before us said that in their opinion the federal government is going to move on these issues in maybe two weeks, which may make all our discussion—

Mr Chiarelli: When it comes to Bill 151, or Bill 151 in some amended form, I think we should not set that aside in anticipation of the federal government moving in this area. I think what we can do is ask the Solicitor General and the House leader to refer it back to this committee for deliberation as a bill, legislation. We can have whatever hearings we want to have over the break. We can report it back for third reading. In fact, we could even pass it on third reading and the government could hold it for proclamation, pending what the federal government does. Quite frankly, it may take the feds years, and my recollection of the advice we received from people who came before the committee is that the province should show the leadership on the issue and we should go alone if we have to.

If we move to third reading and if it were passed on third reading, on the understanding that the government would not proclaim it if the federal government moved into the area, that would satisfy me and I believe it would satisfy our caucus. Then we would have basically something that is alive and could be implemented if the federal government turned away from this area.

The Chair: I propose that we recess for 10 minutes while some of you read that document that should be coming shortly.

The committee recessed from 1605 to 1613.

The Chair: Is there agreement to have Mr McNaught go back and, in reading all these documents, come together with some sense of three things that Mr Harnick

was talking about—community-based crime prevention initiative suggestions; a proposal re this bill and possible amendments, based on whatever there is that we might agree on; and you said also the role of the federal government—in terms of whatever position we want to take as a committee.

Mr Harnick: All I am referring to is that the government document Mr Mills has been kind enough to provide us with virtually emphasizes in every area what we should be asking the federal government to deal with. That's fair; a lot of this is in the federal jurisdiction. But at least we have an influence and we should be dealing with this in a comprehensive way.

The Chair: So we would come back next Monday. We may call a subcommittee meeting, however, because it might be useful just to make sure we're on the right track and not spend all our time Monday agreeing or disagreeing on what we're going to do. I may call a subcommittee on Thursday to get a better sense of how things are going, and by that time Mr McNaught should have had time to read and review.

Mr Murphy: Mr McNaught has outlined a series of recommendations on quite a number of specifics that we heard from witnesses. I think it would be helpful, to the extent that members and caucuses can do so, led by the subcommittee meeting, if we can give an indication of acceptance or rejection of the individual amendments or individual suggestions in here—or you can reject the whole page, it doesn't matter—so he has a bit of a sense where, on specifics, each of us is going so he can identify that for Monday. We have broad-brush recommendations, for example, on the government side, but it's not clear what specifics, all the specifics, they would support or reject, and we could waste a lot of time going back and forth on that on Monday. It may be helpful, if we're having a subcommittee meeting on Thursday, to give an indication to Mr McNaught yea or nay on specifics.

Mr Chiarelli: I'm a bit puzzled by the government's recommendations, not so much by what's in the seven recommendations as by what's not there. The motion that was referred to the committee basically covered two areas: one was the area of ammunition, and the other was community safety or crime prevention, however it was described in the motion. There are no recommendations whatsoever relating to the second part of the motion; it's all related to ammunition or guns. I would certainly hope that when we do get together next week there'll be some consideration to looking at the whole motion.

The Chair: Next week we would be sitting Monday and Tuesday. Is it your sense that we'll need Wednesday

and therefore need to ask our House leaders to give us agreement to sit Wednesday?

Mr Chiarelli: If necessary.

The Chair: So we'll ask the House leaders for agreement to sit on Wednesday if necessary.

Mr McNaught with a point of clarification.

Mr McNaught: Is the committee asking me for a document that compares the three documents I've received from each party, or is the committee asking for a draft report based on those?

Mr Mills: A draft; that's what I said.

Mr Harnick: Yes, I think we want a draft report. And I don't think you should spend all your time dealing with these other documents, because I think you've got to confine it to what the motion is.

Mr McNaught: Those documents as they relate to the motion.

Mr Chiarelli: You're going to basically amalgamate the committee deliberations, presentations, briefs or what have you, with whatever documents we've given you which relate to the motion.

The Chair: I think we've dealt with everything else on this committee. Mr Murphy, you've got a question?

Mr Murphy: Besides this, what other matters are sitting on the list?

The Chair: We have Bill 3, An Act to provide for Access to Information relating to the affairs of Teranet Land Information Services Inc., a motion by Mr Tilson. I'm not sure what the members want to do with that. We have Bill 45. We have Bill 56, An Act to protect the Civil Rights of Persons in Ontario.

Mr Harnick: That's gone.

The Chair: All right. Bill 89, An Act to amend the Health Protection and Promotion Act: We have some work on that, not too much, but that still is outstanding in terms of work we've already done. Bill 151, An Act to control the Purchase and Sale of Ammunition, which is part of this, and there is the standing order 125 designation, the victims of crime report that we have to still complete.

Mr Murphy: We have three minutes left on that?

The Chair: Three minutes left, but there's a great deal of work in that designation. Then there's a 108 designation, which is this one. So there are just a few issues outstanding, but I'm not sure what the committee's interest in the other issues is.

This committee is adjourned until next week, Monday.
The committee adjourned at 1619.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Vice-Chair / Vice-Président: Harrington, Margaret H. (Niagara Falls ND)

***Akande, Zanana L.** (St Andrew-St Patrick ND)

Bisson, Gilles (Cochrane South/-Sud ND)

***Chiarelli, Robert** (Ottawa West/-Ouest L)

Curling, Alvin (Scarborough North/-Nord L)

***Haeck, Christel** (St Catharines-Brock ND)

***Harnick, Charles** (Willowdale PC)

***Malkowski, Gary** (York East/-Est ND)

***Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

***Winninger, David** (London South/-Sud ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Carter, Jenny (Peterborough ND) for Mr Malkowski

Mills, Gordon (Durham East/-Est ND) for Mr Bisson

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Third Session, 35th Parliament

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Subcommittee report

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Rapport de sous-comité

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 20 June 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 20 juin 1994

The committee met at 1554 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Rosario Marchese): I call the meeting to order. I'll report very briefly on what we have done in subcommittee. We dealt with Bill 45, and I want to report that there was no unanimity on what to do with Bill 45. There was unanimity, however, on other bills—Bill 89, Bill 151 and Bill 168—that we should deal with them over the summer period. The request we are making of our House leaders is to have two weeks to deal with these three bills. Discussion on the subcommittee report?

Mr Tim Murphy (St George-St David): The question I have with respect to the absence of unanimity on what to do with Bill 45 is, what does that mean?

The Chair: It means there was no agreement about how to proceed with Bill 45.

Mr Murphy: So what happens to it as a result of that absence?

The Chair: It simply stays there and doesn't get dealt with until the members decide what else to do with it. Obviously, unless we get some agreement before we recess, it doesn't get dealt with over the summer period.

Mr Murphy: So that means that because of the absence of unanimity, it will not get called?

The Chair: Mr Murphy, you're asking me questions, but is there something you wanted to say, perhaps?

Mr Murphy: I'm trying to ask the questions. I'm trying to get you to help me clarify what the situation is.

The Chair: Ask your question again.

Mr Murphy: The absence of unanimity means Bill 45 won't be called, according to what you have outlined to me. Is that correct?

The Chair: It means that we take no action on it, correct.

Mr Robert Chiarelli (Ottawa West): A point of order, Mr Chair. I guess a point of information, actually. The reason I'm asking for the point of information is partially for myself, because I'm not 100% clear on it, but also there are a lot of people here who are very interested in Bill 45. I think it's incumbent on you as the Chairperson to indicate what the process is for getting business before committees. In other words, on the assumption that there was 100% agreement on Bill 45 or 100% disagreement on Bill 45, this committee really wouldn't make the ultimate decision. The decision about which bills will go before a committee is ultimately that of the government House leader and the government. I want people to be perfectly clear that notwithstanding

what this committee agrees or recommends, that isn't the final decision-making process. It has to leave here, it has to go someplace, and the decision will be made by the government, notwithstanding what this committee decides or recommends. Is that correct?

The Chair: There are two things I want to say in relation to your comment. First, subcommittees usually decide what issues to deal with. Different caucuses recommend different things and at the end we strive for consensus as we bring things over to committee. The committee then debates those issues, whatever we recommended or didn't recommend. After that it goes to the House leaders and then the House leaders decide on whether they agree with the committee in terms of what we request.

Mr Chiarelli: Just to be perfectly clear, if we decided to deal with Bill 151, the ammunition bill, in this committee and it went to House leaders, the House leader and the government could decide not to deal with Bill 151. Is that correct?

The Chair: That's right. The House leader of the government would presumably make suggestions and the House leaders would agree or disagree.

Mr David Winninger (London South): Certainly an important issue is raised around Bill 45. I hope I won't be interrupted here, and I speak as a supporter not only of Bill 45 but also of Bill 167.

Last December, before the House broke, I moved a motion in this committee to bring Bill 45 forward to have public hearings on it in January; I attempted to do that. Subsequently, the House leaders met and it was resolved not to conduct those hearings in January. Eventually the government introduced its legislation, Bill 167, and we all know the unfortunate result of the introduction of that bill.

What we're telling the Liberal Party, and I say it very directly here today, is that if the Liberal Party or Tim Murphy wish to have that bill brought forward, we need to have considerable assurances from the Liberal Party that the bill has significant, if not substantial, support from the Liberal Party. We just heard on the Focus Ontario show on the weekend Mr Murphy's own whip, Mr Mahoney, say that there might be six votes for Bill 45 in the Liberal Party and they're probably soft votes. He said that he himself would not be supporting it.

We need to be quite clear: We don't want to again put the gay and lesbian community through the trauma they've been through over the last few weeks and months. If there's some inclination on the part of Mr

Murphy to bring forward that bill, let's see significant, if not substantial, support from the members of the Liberal Party that we can carry that bill forward successfully. Until that token of support is offered, we need to defer consideration of Bill 45. Those are my remarks.

1600

Mr Gary Malkowski (York East): The member for St George-St David raised the issue of Bill 45, and your personal efforts have been recognized. But there is one thing. Specifically, I have a question for you and the Liberal Party: What is your position? My concern is that you have led the gay and lesbian community with false expectations and false hopes through this procedure.

One important thing is that you need to show us a written commitment, perhaps a list of members guaranteeing their support of Bill 45, a written commitment to show that the Liberal Party will support. We had the confirmation that there would be support for Bill 167, and it lost. I think you're causing people to have false expectations. This is what we would like to see first. Can that guarantee be provided that you have the support?

The Chair: Before I ask Mr Murphy to speak, I remind the committee members that there was no motion that came out of subcommittee to deal with anything around Bill 45. Unless someone moves a motion, nothing is being deferred or nothing is necessarily before us unless someone decides to do differently.

Mr Murphy: Do we have a motion on subcommittee business?

The Chair: We have a motion to deal with Bills 89, 151 and 168 over the summer recess. Of course we need someone to move that.

Ms Christel Haeck (St Catharines-Brock): I will.

Mr Murphy: Let me first speak to some of the comments from colleagues on the committee. My concern is that we seem to be getting caught up in a partisan back-and-forth between us.

Interjections.

The Chair: Order, please. Let Mr Murphy finish.

Mr Murphy: You have asked for a written commitment of the numbers of people in the Liberal Party who would vote for the bill, something that has never been asked for by the government, ever, on any other bill, without any indication of the numbers in the government who would vote for the bill. In fact, the only public indication I've seen so far from the government is comment from your caucus head saying he wouldn't want to see the bill called because he doesn't want "to help Murphy get re-elected," a not dissimilar comment from the Premier.

My concern is this. Having public hearings on the bill is not a vote on the bill; they're just public hearings on the bill. The value of those hearings could be beneficial in persuading people to vote for the bill at the end of the process, because there's an education. The Bill 167 debate was at times educational for some, at times quite polarized. I think a further debate and hearings on Bill 45 would provide an opportunity to educate further members of the Legislature to come to a different conclusion. They might even have now; it might firm up support that

wasn't there before, change some minds. That is a possible result of having public hearings.

We may be able to find a way to amend Bill 45 to gain further public support both within the Liberal Party caucus and perhaps the NDP caucus, those members who voted against Bill 167; and those others, like Steve Owens, who voted for 167 but gave an indication he would not vote for 45, may find their minds changed by the process of hearings.

The hearings in and of themselves have a virtue by occurring. It is not a vote on 45 until it is called by the government once we report the bill back to the Legislature. There is no vote until third reading. To even say now, if I could, that there are guaranteed x votes or guaranteed y votes would not be a guarantee of votes. At the end of the result, it may underestimate those numbers; I don't know. I think the hearings have a virtue and that those hearings should proceed.

Have you got a sense from your caucus what number of people are going to vote for Bill 45 at third reading? I would expect not, actually.

Bill 167 was an unfortunate and unhappy result, and I suspect a lot of people feel bruised by the result and the process. I know there is a sense, and I agree with it and I've had communications with the Campaign for Equal Families and others, that we would not want to call Bill 45 and have the same result as Bill 167. Having the hearings doesn't necessarily mean you're going to get that result. In fact, I think having the hearings will give you an opportunity to hear—

Interjection.

Mr Murphy: I don't know. And it's a free vote on the bill, which is the same as you had on 167, so it's a bit strange to say "guarantee votes" when it's a free vote, in the same way that I couldn't expect you to guarantee votes on a free vote. And it will be, I suspect, a free vote at the end of the day too.

I'm saying we should let the hearings proceed and then we can have a sense after that. I suspect we may at the end of that process have something out of this committee that most of us could agree on, with the exception of the few Conservatives on the committee, and we could get some kind of cross-partisan agreement.

The people I talk to are mad at all of us and think we have failed in our responsibility as legislators and are looking to us to rise above the partisanship that I think characterized some of the way the issue has been dealt with to date and work together. I'm pleading for that. Give it an opportunity.

We don't even have a motion on the floor. My first preference would be to table the motion, to give us time to reconsider the report of the subcommittee, to give each caucus the opportunity to reconsider Bill 45, and maybe we can reach an agreement to have it go to hearings. We don't have a motion on the table yet, I gather, on the subcommittee report.

Mr David Tilson (Dufferin-Peel): Actually, we do.

Mr Murphy: Has it been moved?

The Chair: Ms Haeck was prepared to do so.

Mr Murphy: Then I would move first to table it, to give time to reconsider what we do with Bill 45.

The Chair: I think the way to do that would be—well, let me get to the other speakers.

Mr Chiarelli: I'm going to take a few minutes to explain it from my perspective, as a member with seven or eight years' experience in the Legislature.

The gay and lesbian community in particular has been jerked around by this issue, number one. Other people who feel strongly on this issue have also been jerked around, on how it has been coming to the table on various occasions.

We knew there were some human rights tribunal decisions focusing around the pension and employee benefits area. We knew that was flowing out of the Ontario Human Rights Code and looking at the Charter of Rights.

Nothing was brought forward by the government whatsoever. There was nothing on the agenda. There was no indication that any legislation would be coming forward from the government or anybody on this issue, notwithstanding the fact that there was a lot of lobbying and a lot of legwork being done by people in the gay and lesbian community, most of it very professionally done.

We happened to come up against the St George-St David by-election. We all know there's a very large percentage of gays and lesbians in that particular riding. It was a very high-profile issue. All candidates for all parties made promises in this area of legislation.

Coming out of that particular by-election, Tim Murphy won the election. He brought forward a private member's bill which went far less down the road than a lot of people thought he had promised and expected. In any case, Bill 45 was introduced, it was debated, it was voted on at second reading and it was referred to this particular committee.

As a result of that bill, which fell far short of what the gay and lesbian community wanted, very intense lobbying took place with the NDP government, with members of the NDP caucus, that Tim Murphy's bill didn't go far enough: "NDP, why don't you honour your previous promises in this particular area?" Consequently, there was very heated debate within the NDP caucus. Votes were taken on a number of occasions. We're all aware of what happened in that particular process.

1610

What subsequently happened was that Bob Rae could not deliver Bill 167. He therefore decided to do it on a free vote. He did it on a free vote—and this comes to your suggestion—not knowing what the votes really were. He couldn't deliver Bill 167 on a free vote. Consequently, Bill 167 was introduced and was introduced almost in secret on a Thursday afternoon with people not aware of it coming forward.

Interjections.

The Chair: Can I suggest to the members, most of you are on the list to speak, so just please hold on.

Mr Chiarelli: If you want to have a fair and honest debate, be fair enough to listen, and we'll listen to you.

The fact of the matter is, you introduced Bill 167, a bill which fundamentally affected at least our legal notion, our consensual notion which has existed for many years, of what family is.

I'm asking everybody here most directly: On an issue that's so important, compare it to Bill 40, dealing with labour issues. You had a task force, you went out and put it out there for people to debate over time, and you let people on both sides of the issue try to understand it. If you look at workers' compensation, the plight of the injured worker, you set up a royal commission. If you look at every major piece of legislation affecting a large number of the people of the province of Ontario, you had a very specific process. You had white papers or you set up royal commissions and you permitted debate and you permitted research.

What you did with the most fundamental, emotional issue of family is bring it in unseen on a Thursday afternoon and immediately polarize everybody. So what happened? You got exactly what anybody would have predicted, having looked at the process. Quite frankly, if you want to deal with the issue of redefining the legal aspect of family, you're going to have to give these people who are here today the right to sit and talk to other people who feel they have rights.

We're looking at research. We're looking at dialogue between people over a period of two or three or four months, the way you've done with every other major bill that you've dealt with. You would have had honest debate, you would have had fair exchange. I would have had an opportunity to sit at length and meet with people in my community. I could have had town hall meetings in my riding so both sides could get together and we could try to come together on this issue.

But no, Bill 167 was introduced reluctantly on a free vote, not knowing you had the votes, on a Thursday afternoon, and voted on that week and the following two weeks. It was defeated, and what does the government do? It comes in and says, "We have another free vote." Normally, a private member's bill is a free vote. And what the government is saying is: "We can't deliver the vote on this bill. We couldn't deliver it on Bill 167. Therefore, we want to do something that's absolutely unprecedented."

It's never happened in the Legislature before that the government came forward and basically said, "We want a commitment of x number of votes from the opposition and then we'll deal with the bill." That's unprecedented. It's chicken-livered. You don't have the guts to deal with the issue. That's the bottom line.

Ms Haeck: Are you going to vote for it? Some of us sit in the House—

The Chair: Ms Haeck, we have other speakers.

Ms Margaret H. Harrington (Niagara Falls): I find it amazing that Mr Murphy would sit there and say, "Let the hearings proceed," and go ahead and say hearings have a virtue in themselves. I agree with that. Last January we sat around this table and around the subcommittee and we had scheduled for hearings to proceed on Bill 45. I had alerted people in my riding that this was

the place to come to hear and to be educated on this issue. Then Mr Murphy stands up in the House and doesn't want it to proceed.

Mr Murphy: No. That's not true and you know it.

Ms Harrington: No. I believe the hearings do have virtue and I believe we were right to try to go ahead with it, but you said no.

Mr Murphy: On a point of order, Mr Chair: I had moved a motion to table or defer the vote on this, and I thought that was a non-debatable motion.

The Chair: If you want to debate tabling, we can do that. I felt that if you had a discussion allowing people to be heard, that would take care of it in the end.

Mr Murphy: Is it a debatable motion?

The Chair: As far as we know, it is. Do you want us to deal with your motion of tabling? It was a procedural question.

Mr Murphy: Are we clear that the motion to table the vote on this, to reconsider, is a debatable motion?

The Chair: Yes.

Mr Murphy: Then we might as well have a debate on the substance.

The Chair: But, Mr Murphy, do you want to discuss tabling, which doesn't necessarily deal with Bill 45? It only deals with the other bills, 89, 150, 168. Whether those went ahead or not, it doesn't affect Bill 45.

Mr Murphy: But it does, because we are, as a committee, going to request time to consider the private members' bills we have before us, which includes ours, and I'd prefer, obviously, to have 45 as part of it.

The Chair: You could move an amendment to the motion that would say we deal with Bill 45 as well.

Mr Murphy: I'd prefer to do it on consensus, so I suggest one day so we have a chance to talk and do that.

The Chair: He's moved a motion to table, so we'll debate that motion.

Mr Chiarelli: Table till when?

Mr Murphy: Tomorrow.

Ms Harrington: I would like to conclude my remarks, Mr Chair. I'm sorry, I do have to leave at 4:15, as I have to chair in the House.

It's very clear from my point of view that we cannot go forward on this issue without Mr Murphy convincing his colleagues. We've been through this once, we know where it lies, and he has to do some work within his own caucus.

Mr Chiarelli: Convince the rest of your colleagues.

Mr Malkowski: What we have right here, on the public record, is that you have to accept responsibility for the fact that you did not vote in favour of the bill, so your comments are completely inappropriate. In fact you're misleading the people in the audience. It sounds very much like political posturing and I think it's rather hypocritical. I'm sure the gay and lesbian community is not going to accept the comments you have made. You have not been fair to the gay and lesbian community, and now you're trying to raise false expectations. It's completely unacceptable.

The second point: I would remind both members that I heard very clearly messages coming from your member saying that when 167 was introduced, you said we were mismanagers, that we should never have introduced it the first time. People are going through a grieving process right now. Your comments in the House came out loud and clear.

The third point I would like to make is following up on the comment from the member from St David. You very clearly said that you did not support your own private member's bill when that was up for discussion in January. It's on the record; you clearly said that. You agreed with your own political leader, and it came out very clearly that you were not in support of this.

My fourth point is that Bill 167 was introduced by us because we believed the letter that Lyn McLeod, your leader, wrote, saying they would promise to support such legislation, during your own by-election. It's on the record. It's very clear what she said she would do, rather than did. Now you're sitting here pretending that you two are working very hard, showing how much you care about this issue, how much work you're willing to do on this issue. Those comments are unacceptable.

Interruption.

The Chair: If you don't mind, we need to move through this as cleanly as we can.

Mr Malkowski: The Liberal members, as a group, need to be asked a question, and I'm asking you to stop playing with people's lives, really, because that's what you're doing. You're playing with the emotions of the people in this audience and this community. It's unacceptable, it's reprehensible. I would ask all of you, and challenge you, in fact, to come on, show us, give us the written commitment, the guarantee, that this kind of bill would even be supported before we can reconsider something such as this.

1620

Mr Murphy: Where's your written guarantee? Where's your promise?

Interjections.

The Chair: Hold on, please. I'm trying to give each side the opportunity and the time to speak. We're doing that, and most of you are still on the list.

Mr Winniger: It's important to go back for a moment to the point in time Mr Chiarelli was referring to, the by-election in St George-St David. That was very instructive of what the professed inclination of the Liberal Party was at that time. We have a letter, we have documentary evidence from the leader of your party expressing her support for—and she used the word “full”—full rights for gays and lesbians and urging our government to bring forward legislation to give her and her party the opportunity to support it. It's in the context of that commitment that a certain by-election was won by a certain member in St George-St David.

Mr Murphy, to his credit, brought forward Bill 45, but after that, I have serious doubts about the kind of politics that were being played over this bill and the rights this bill was supposed to represent.

As was said earlier, when I moved the motion—and I

believe it was last December—to have hearings in January on Bill 45, Mr Murphy got up and walked out, and I believe other members of the—

Mr Murphy: That's not true, David.

Mr Winninger: We have it in Hansard.

Mr Murphy: Exactly. Don't lie on the record, David.

Mr Winninger: Excuse me. You walked out—

Interjections.

Mr Winninger: Can I complete this, Mr Chair?

The Chair: I would prefer that you did that.

Mr Winninger: There were witnesses to Mr Murphy and other opposition members walking out. The fact of the matter is, in Hansard you will see our government votes recorded, showing support for my motion to bring this matter forward for hearings.

Mr Murphy: Why don't you do it now?

Mr Winninger: It's quite clear why we wanted to bring Bill 45 forward for hearings. We did, as Mr Murphy indicated earlier, want to do some education around this issue with the public, wanted to hear what the public had to say, wanted to ensure there was support for this bill, both within and without government, so we could move the legislation forward and finally confer upon gays and lesbians the equal rights they deserve.

The fact of the matter is that after that motion was passed by our government members, Mr Murphy's House leader met with the other House leaders, and from that point on, those hearings could never take place.

So for Mr Murphy now, after the defeat of Bill 167, for which his party was instrumental in only delivering three out of however many votes were there—and I disagree with Mr Chiarelli when he suggests that we ambushed the opposition. Quite frankly, the galleries were full of spectators. The entire Liberal caucus was there, except for one or two members, which is an infrequent occurrence, to put it at its best. The third party of course voted against the bill, and they made that clear from the start. But what I cannot stomach personally is a party, the opposition, playing politics with this, and now that they were instrumental in the defeat of Bill 167, coming forward and saying, "Maybe now's the time to bring forward Bill 45 for hearings." After all, they couldn't vote for it last December, when it would have been really valuable.

So what we say to the opposition, and I said it earlier, is this: Give us some assurances that Bill 45 has support from your caucus. We don't want to put the gay and lesbian community through this trauma again. I think it should be self-evident that you can't rewrite history. This revisionism just won't work. The gay and lesbian community out there, not to mention the government, realize what the opposition is up to. If they genuinely support Bill 45, let's see some assurances, because all the evidence we have thus far, and most recently on the week-end from your whip, is that there is no support other than six soft votes, excluding your whip.

Why should we bring this matter forward for hearings unless we know there's a purpose? We can't play another charade with human rights. Forgive me if I seem a little

emotional on this topic, but I, like others, have been through the wringer, and I feel that the Liberal Party has engineered a lot of the suffering we've gone through. If they could only be upfront, at least like the Conservatives, to give them credit—even though I can't, because they opposed this important legislation—if they could only be upfront like the Tories, we could spare ourselves a lot of the pain. Mr Chiarelli was right when he said that the gay and lesbian community has been very badly served, but the authors of their misfortune are the Liberals, not this government. So let's see your assurances; then we can move forward.

Mr Kimble Sutherland (Oxford): We've talked a little about the past history here in terms of Bill 167, but it's also the comments the Liberal leader made during the debate on 167. She said very clearly, "I no longer see it as a priority to bring forward legislation, either in this term or"—and she said if she were to form a government she wouldn't bring it forward.

I understand Mr Murphy has a problem. He ran on the issue. He brought in the legislation. He thought his leader supported him and his party supported him. His leader and his party have sold him out and now he's in a very difficult situation. He wants to see how to go forward. But given the comments of the leader of the official opposition during the debate on Bill 167 indicating that she doesn't want to go forward with legislation if she were to become the Premier, and given the comment of your whip last week on Focus Ontario, I don't see why Mr Murphy would be surprised that we're reluctant to go through this exercise again.

If he can't show documented proof in terms of signed letters, all the members of his caucus who are going to support this bill, what is the purpose of going through it, other than an exercise to try and help Mr Murphy himself? I understand his reasons for doing that, trying to be the sharp politician that he is—or has been. But in terms of the greater interest of moving the issue forward, until some type of commitment is expressed by a significant number of Liberal members of this Legislature, I really can't see the merit in going forward with this process.

The unfortunate reality is that Mr Murphy, with I think all degree of credibility and integrity and commitment to the issue, moved forward on it, and he thought he had the support of his leader and he thought he had the support of his party. The government brought forward its own legislation, thought it had the support of the Leader of the Opposition and the Liberal Party. When there were concerns expressed, the government was willing to make amendments. Liberal leader Lyn McLeod and the Liberals said, "No, that's not good enough." So now Mr Murphy thinks that just on his good word alone—he doesn't have the support of his caucus or his leader—we should be willing to go forward with this with some sense that it's going to have a chance of passing.

Well, it's very clear that the track record is that the Liberals keep changing their minds on this issue, Lyn McLeod keeps changing her mind on this issue. Quite frankly, they do not have any credibility at this stage on the issue of same-sex benefits. Mr Murphy has credibility, he's been consistent, but his party and his leader, Lyn

McLeod, do not have credibility on this issue, and it's asking a lot to expect the government to simply rely on the word of Mr Murphy when he's been sold out by his leader, Lyn McLeod.

1630

Ms Zanana L. Akande (St Andrew-St Patrick): For me, this really isn't about who introduced what bill and when. It isn't about the time of the vote either, being Thursday or being Wednesday or whenever it was. This is about promises and ethics, because at the end of the day, this is about the realities of people's lives. In the House last week we have really done ourselves the greatest disservice we could have done: We have refused to support the rights of people.

We talked about public hearings being a time for discussion. I want to tell you, discussion is happening right now, every day, on subways, in buses, wherever you go. People are discussing the issue. It's about time people discussed the issue and discussed it with real information, real facts and real knowledge about what parenting really means. It's not about whether it's gays or lesbians, or what a husband and wife is; it's about people caring, about children.

It's being discussed. It's late. For some people it's late, but I have to tell you that it's better late than never. What remains for us to do now, because we can't guarantee the votes—after all the political manoeuvring and manipulation, of which I have never been a fan, it turns out once again that real people are missing their real rights.

What I think we can do is to let the discussion continue, and maybe at some later time, with some later composition of a group in the government that will be more supportive, we will have our rights. But I can't believe that it serves anyone any good at this time to bring this bill into the Legislature again or to spend this kind of aggravating moment while people are pushed from one side to the other like ping-pong balls.

I think it's unfortunate. If there were a time that we could guarantee that the Liberals, that people would support it, that we would have a sufficient number, I would be the first one to say, "Let's bring it in again," but it isn't going to happen, is it? It isn't going to happen. So let's all stop agonizing with these people, and say, "The votes aren't there and you aren't going to have your rights this time."

Mr Murphy: I agree with Ms Akande that the discussion is happening. I suppose that is the one small virtue of what happened in the Legislature in the last few weeks, that discussions are happening in places all across the province. I think that can only be beneficial in the long run.

To respond to some of the specific comments, in terms of a guarantee, I'm not sure how that makes any sense to me in the context of this. The truth is, I don't know what the votes are going to be. I suspect you don't know what your votes are going to be. My sense from the debate is that there are quite a few Liberals who are supportive of benefits; they want to have the debate about the mechanism to do it. Some of what was clear during the debate on 167 was that the concerns others expressed—not me,

because I voted for 167 and spoke in favour of it—were around adoption and the redefinition of "family," and that a mechanism that paid benefits and didn't run into those problems might be supportable by them.

I think it's an odd argument that Ms Akande is making to say we should allow the discussion to proceed in the public venue, but we as legislators, as the representatives of the people, shouldn't discuss it while the public is discussing it. Those two things can happen at the same time. They aren't mutually exclusive, although some in the public would think they are.

What I haven't heard is any sense of what the government's vote is going to be. In theory, every Liberal could vote for my private member's bill and that wouldn't pass it, because there are presumably 22 Conservatives who'd vote against it, and then it's up to you guys. It's up to you. We have seen that 12 members of your party voted against 167, voted against it despite the argument you made about the promise of amendments. My sense from what I've seen subsequently is that there are even more people within your caucus who wouldn't vote for 45 as a result of the debate. It may not be true. I see someone shaking his head, but I don't know. I can only interpret what I see in the press so far and what I hear in conversations in the hallway. I saw, as I referred to earlier, Steve Owens's comment that he wouldn't vote for it.

It's an odd thing. Mr Winninger referred to hearings earlier. What I had tried to seek from the government then and could never get at that point in time was a commitment to passing Bill 45 or an indication that it was going to do its own bill. I could get neither. However, the committee did vote for having hearings, without any request for a guarantee. The government members sat there, without any of these shenanigans, and said, "Let's have hearings." I'm not sure I understand why you can't do that now.

I think we should consider 45, and I want to amend the subcommittee report to say we should consider 45. I'm withdrawing my motion to table and moving that amendment.

Mr Chiarelli: I want to say something very simple and straightforward. It's unprecedented in a majority government for the government to blame the opposition for non-passage of a bill. Very, very simple.

Mr Sutherland: Your leader was on the record as supporting it. That's the reality. Your leader changed her mind.

Mr Chiarelli: Somebody said to the Liberal Party that we should be upfront. Some voted in favour, some voted against. On the government side, some voted in favour, some voted against. The numbers, the percentages, were different. They were on different sides of the issue. However, it is unprecedented in a majority government for the government to blame the opposition for non-passage of a bill.

If you look at what Ms Akande is saying, I tend to agree with her. It can involve the government or it can not involve the government. Preferably, it should involve the government.

In my opinion, this debate, the way Bill 167 was

introduced, caught a lot of people off guard and by surprise.

Mr Sutherland: Come on. You knew it was coming.
Interruption.

Mr Chiarelli: You knew maybe a week or two before. But let me make my point, because I'm basically trying to point out to people on both sides of the issue that a lot of us have been shortchanged, from this perspective. When I talk to my children, my adult children, four of them, ages 17 to 29, they support Bill 167 and they say, "Dad, why don't you vote for 167?" I say to them, I have a moral problem with that particular issue—a political problem.

Interruption.

Mr Chiarelli: If the people in the audience would be patient and hear me out, maybe there could be some understanding. Maybe you have a friend sitting here and you don't know it. Just listen.

I'm saying that there are issues involved which need some dialogue and need some understanding. I represent a riding that has the second-largest number of senior citizens of any riding in the country. This issue to a large extent is generational. I'm sitting here as an MPP, and I've got to say to myself, if 85% or 90% of my riding are opposed to Bill 167 or Bill 45 and yet I sense that there is some area for legislating and some area for bridging the gap, I would like to be able to do that. I would want to have town hall meetings in my riding and I would want to get both parties together and try to deal with it.

In most major pieces of legislation, I have that opportunity. I did not have the opportunity with Bill 167.

Interruption.

Mr Chiarelli: I'm simply saying to you that that may be a very valid point to get out there and debate.

The Chair: Mr Chiarelli, please. If you address the people at the back, it'll be very difficult.

Mr Chiarelli: Mr Chair, the people who are sitting there want to dialogue and they want to express some feelings, and they do that in a way that perhaps is not appropriate. I feel it's appropriate that I should be able to talk to them as I could talk to my constituents.

1640

The fact of the matter is, when I look at the question of adoption, I say maybe it's a good idea, maybe it's a bad idea. I don't have any evidence from psychiatrists or psychologists before me. I want to study it and look at it from a realistic, objective point of view. I want to sit down with that evidence and talk to my kids and I want to talk to the senior citizens in my riding. If it's a black-and-white situation, then there's no chance for dialogue.

If the government had brought forward a process for proper dialogue so I could talk to people on both sides of the issue, could fulfil my responsibilities as an MPP, could talk to the senior citizens, could have an opportunity to explain what my thinking is, could have an opportunity to explain what the other side's thinking was, there may have been room for amendments and compromise etc. But to bring it in on a Thursday and vote on it two weeks later on second reading was totally inappropriate

from a process point of view. That's my thinking.

Mr Malkowski: I would like to remind you, Mr Chiarelli, that you said your riding is the second-largest population of seniors in Canada. Actually, you're wrong. My riding has the second-largest number of seniors, East York. Maybe you're joking on that one, but you again seem to be playing political games even with those facts.

I accepted responsibility, some leadership responsibility, to educate the population in my riding, many of whom are seniors. I voted on 167 in favour. Where is your responsibility? Did you not take a leadership role to educate seniors about the needs and rights of gay and lesbian people, or are you now just using that to play another game?

I want to make sure it's on the record. Mr Chiarelli, the gay and lesbian community know you voted against Bill 167. They network throughout this whole province. They know you could have accepted responsibility, and instead, what you're going to now do is accept the consequences. You are obviously an expert; you as a lawyer are very knowledgeable. You knew of what you spoke, yet where is your accountability? Where is your credibility? Where were you being accountable in terms of showing leadership in your riding and speaking out on human rights issues as opposed to playing political games? This whole stuff is not acceptable.

In terms of the comments made by the member for St George-St David, you did not support Bill 45 in January, and now we're hearing a lot of very ambiguous comments coming from the member. I think you should come out very directly and admit what you actually did. The Liberal leader was saying on the record, when it suited her, that she would be supportive. Suddenly, she changes her mind. Now, suddenly, you're talking about concerns about adoption also. We were actually willing to make the amendments that were needed just before the vote. We said we would reconsider that, would make amendments to the issues the Liberals said were their biggest concerns, and now suddenly, "Oh, it wasn't the adoption issue that was the problem; there was some other problem." The bottom line is that the Liberal Party has to now accept the responsibility that you opposed the bill, you denied the rights of gay and lesbian people in this province, and you are responsible and accountable for that.

I have some instructions for you: You had best go back and meet with your own caucus members and speak to the gay and lesbian community. I think they need to be lobbying Liberal members to reconsider their stand on this issue, because they did not vote in favour of 167 and I don't think they would vote in favour of Bill 45.

We've still heard no specific commitment even from the member for St George-St David. You're saying: "Well, I can't guarantee. I can't speak for sure about how many people would vote." We have nothing in terms of a real guarantee. Show us something in writing, and show that same commitment to the gay and lesbian community. I haven't heard that; I have not seen a commitment or heard that from you.

How dare you bring up this bill when you know full well that you are not going to be able to get support from your own members? How dare you do this again? You're

just playing games with the lives of gay and lesbian people, and it's unacceptable.

Your job should have been to educate your own members and bring gay and lesbian people to meet with the caucus members in the Liberal Party who were opposed to it, just as we did. We tried to educate each other. There were people in the NDP caucus who were opposed, and we tried to make sure they were educated. You should've been working with the gay and lesbian community to make people on your side reconsider their vote.

We in fact did get some people to reconsider it, and I'd love to see another government bill come through if we could guarantee that the Liberals would reconsider. But I'd have to know that 167 would be able to go through, because it was a much more comprehensive bill than 45.

You go back to your own caucus. Reconsider what you've done and show us some written commitment, because that's basically the bottom line, and it's what the gay and lesbian community want to see also.

I'd remind both of you that in the next election, when you start talking about playing political games, remember that this isn't a game. This is a human rights issue.

Come on, show Ontario that there is a place for standards, respect and tolerance. We've done it. Now it's your turn. You guys were the ones that screwed up the efforts of the government and destroyed that effort, and shame on you. Shame on you.

Ms Haeck: I wanted to comment on the impression that somehow, all of a sudden at this juncture, we would need far-reaching public hearings. I have to say to my colleagues on the committee that I would be surprised if your office were unlike mine, in that from the time Mr Murphy's bill was introduced, my office regularly received letters and phone calls from people opposed to his bill. It was also relating to Bill 55 from the human rights critic for the Tory party.

Mr Winninger: And 56.

Ms Haeck: And 56, so we ended up with a whole range of letters from people in my constituency and beyond who had already started a campaign to defeat the bill. That is not to suggest that there aren't elements within St Catharines-Brock that support it. I happen to know that there are. I met with people pro and con the issue, people in the AIDS Committee of Niagara, people who may be known to some of the people here in the gallery.

The reality is, for Mr Murphy or Mr Chiarelli to all of a sudden say that somehow people are unaware of the issues and now need to have this large debate, that they were unaware of what was happening, I would say is exceedingly wrong.

We have media people present who can probably clarify the point about how many times their respective media organs discussed the issue. I am aware, as well as you are, that it was often discussed. It is nothing new.

For you to portray that you did not have the opportunity, in light of the time frame, particularly from the Liberal caucus—in fact, Bill 45 was out there. Your caucus members knew it was there. Mr Chiarelli definite-

ly could've had meetings in his riding. In fact, with the number of Liberal members who are sitting—

Mr Chiarelli: Not on 167.

Ms Haeck: Is it 167 and 45, Mr Chiarelli? There are legal experts who say they are very much the same.

Mr Chiarelli: There's a big difference between 45 and 167.

Ms Haeck: There are definitely differences of opinion about what is included in those bills, and that is something that may in the end be open for legal challenges.

As I have House duty on Thursday mornings, and in fact am one of those people who actually does their House duty on Thursday mornings, my recollection is that Ms McLeod voted in favour of your bill, Mr Murphy, on second reading. I took some heart in that, because I have made it clear to my constituents that I was supporting Bill 45 and also Bill 167 and would continue to support, if we had the support of your caucus.

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I'll tell you why I remember the date. It happens that your leader wrote her letter to my leader on my birthday, which was March 9, saying, "There are all the good things we're going to do for the people who make up a large part of your community," in fact, where I live in Toronto, the people who are my neighbours, who I very clearly see and have made friends with over the last several years. She definitely led me to believe there was some support within your caucus. I know we had 81% support within our own. You didn't even come close.

I know from people not only in Ontario but people outside of Ontario who watch this that they are sorely dismayed at the antics that took place at second reading for 167, particularly from your caucus. There was a lot of hope, and personally I was very disappointed that we lost 167, because it would have meant a lot to people in my riding, not just here in Toronto but it would have meant a lot to people in my riding. I just find it despicable that we're using this as a tennis ball for your political aims.

It is my opinion that you are using this as an emotional football, which I consider unfair to an awful lot of people. You can't deliver and you're trying to insinuate that other people are playing games with you, and that is far from the case. You deliver and I'll vote for it. You can't do it. I will tell you, I will vote for your bill if it comes back into the House, but so far you folks have not delivered, time and time again. Until you guys get your act together—and you haven't proved it, time and again. My comments are finished.

Mr Gilles Bisson (Cochrane South): I'm going to make my comments very brief. I'll support Bill 45 in this format and I'll support it in any format so long as it advances the rights of people. Simple. But what I need to get and what I want to get from you is some sense from your caucus of where you guys are going to be on this thing. If you're prepared to come back to this member and other members and indicate that the Liberal caucus will support this bill, not in a majority, but enough numbers to be able to make this pass—

Mr Murphy: How do I know? I don't even know what your numbers are.

Mr Bisson: Take the math from the last vote and figure it out from there. That's what I'm telling you. If you're able to do that, this government is prepared to support that bill. It really hurts me at this point, because all I see right now is a little bit of game-playing going on. Bring it back, give me some support, and we will come back with you.

Mr Murphy: How many numbers do you need?

Mr Bisson: Do the math from the last vote. You know the numbers. It's a matter of record.

Mr Murphy: I have no idea.

Mr Bisson: Look into the Hansard of two weeks ago, Mr Murphy, and you will see the numbers. Figure it out from there, bring those numbers over, and we will have ourselves a bill. Simple.

The Chair: We have no further speakers on this matter. We'll be voting on Mr Murphy's amendment. He withdrew the tabling of this motion, so we're now dealing with an amendment that would say "Mr Murphy moved that the committee request the House to authorize the committee to consider Bill 45 over the summer recess." Any discussion on this?

Interjection.

The Chair: Formerly we were dealing with tabling. Then Mr Murphy, along the way, moved a different kind of amendment. Assuming we've had enough debate—Mr Winninger, did you have your hand up?

Mr Winninger: Perhaps we can deal with Mr Murphy's amendment first and then I can suggest a further amendment.

The Chair: Very well. Did you want to move some amendments to this amendment here or are you suggesting a different kind of amendment?

Mr Winninger: I was going to move what I consider a friendly amendment, that we proceed to have hearings on Bill 45 when the Liberal Party delivers us the assurances that we described earlier, the assurances that they can command sufficient votes so that we can ensure the success of your bill.

Mr Murphy: That's not a friendly amendment. That's cheap politics.

Mr Winninger: Not at all. Hearings by themselves will not achieve the results that Bill 45 is seeking.

The Chair: If he moves that as an amendment, we can have others speak to the issue. We would be dealing with his amendment and would be talking to that. Mr Winninger, are you moving that as an amendment to the amendment?

Mr Winninger: I'm going to withdraw that amendment, and I'll be bringing my own motion once we deal with that amendment.

The Chair: Very well. We're ready for the vote.

All in favour of Mr Murphy's amendment? Opposed? That amendment is defeated.

Mr Winninger, do you have a different motion to move?

Mr Winninger: I was going to move that we deal with the three bills the subcommittee reported on and defer consideration of Bill 45.

Interruption.

The Chair: There is at the moment no motion other than Ms Haeck's motion, which is to deal with Bills 89, 151 and 168—

Mr Charles Harnick (Willowdale): Excuse me. Can you tell me what those are without the numbers, what the bills do?

The Chair: Do we have a copy to show him so I can explain in the meantime what I was just saying?

Mr Harnick: I have Bill 89. Give me the other two numbers.

The Chair: Bills 151 and 168. Mr Harnick, could you just read that to yourself for a second?

Mr Winninger, I was just going to explain that it's hard to defer something that isn't before us.

Mr Chiarelli: On a point of order, Mr Chair: What's on the agenda now? Is there a motion before us?

The Chair: We have Ms Haeck's motion that this committee deal with Bills 89, 151 and 168 over the summer recess and that we request two weeks from the House leader to do this.

Interruption.

The Chair: If you continue with that, we'll have to recess. We're going to have to recess if you do that for much longer.

Before us we have this motion. I should point out to everybody, as the Chair, that Bill 45 could come back to us. This is the only motion that we have before us. There's nothing else to say to that.

Ms Haeck moves that Bills 89 and 151 and 168 be dealt with over the summer recess and that we request two weeks from the House leader. All in favour of this motion?

Interruption.

The Chair: It's not going to help us.

We're ready with the motion. All in favour of Ms Haeck's motion? Opposed? That motion carries.

We're now going to recess for a few moments. After that, we'll come back to this committee to deal with the other matter that was before us. This committee is recessed for a few moments.

The committee recessed from 1700 to 1704.

The Chair: I call this meeting back to order. After some discussion, I think there is a sense from people that we should adjourn and deal with the other matter tomorrow. This committee is adjourned.

The committee adjourned at 1705.

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**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Sutherland, Kimble (Oxford ND) for Mr Bisson and Ms Harrington

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service



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Official Report of Debates (Hansard)

Tuesday 21 June 1994

Journal des débats (Hansard)

Mardi 21 juin 1994

Standing committee on administration of justice

Draft report
Control of ammunition
and community-based crime
prevention initiatives

Chair: Rosario Marchese
Clerk: Donna Bryce

Comité permanent de l'administration de la justice

Rapport préliminaire
Contrôle des munitions
et des initiatives pour
la prévention de la criminalité
à l'échelle communautaire

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Tuesday 21 June 1994

Mardi 21 juin 1994

The committee met at 1558 in room 228.

DRAFT REPORT

CONTROL OF AMMUNITION
AND COMMUNITY-BASED
CRIME PREVENTION INITIATIVES

The Chair (Mr Rosario Marchese): The committee is dealing with a standing order 108 designation on the control of ammunition and community-based crime prevention initiatives. We are here to talk about the writing of our report. We have a paper by Mr McNaught; perhaps that could be the basis on which we can begin the discussion. Each caucus has had an opportunity to review whatever has been submitted to the respective members. At the appropriate moment, some of you may want to talk about how you want to feed your suggestions into this report, or do something different if you like.

Mr Robert Chiarelli (Ottawa West): Can I have a point of clarification? We have a motion setting out the parameters of this particular discussion. One part of the motion deals with the control of the purchase and sale of ammunition, and we now have a motion of the committee referring Bill 151 to the House leaders for consideration. We should probably, when we're dealing with that part of the report, keep in mind that the decision has already been made for 151 to be dealt with during the summer; we may want to make reference to 151 in terms of any of the recommendations that deal with that aspect of the report.

In a sense, we've pre-empted one of the possible decisions the committee could have made in dealing with this particular report. We pre-empted that yesterday by saying we will recommend that Bill 151 be dealt with in the summer. I just wanted to put that on record.

The other thing I want to put on the record is that, given the motion that was referred to the committee dealing with the 108 matter and the evidence and the briefs we received, I want to commend the researcher for having, in my opinion, captured the gist of what has been recommended to the committee and, in a sense, provided what may be considered two clear options for the committee to consider. In point of fact, it might be suggested that both options might even be considered concurrently. I just wanted to put that on the record.

The Chair: Further discussion on the report?

Mr David Winner (London South): I expect we'll be looking at it line by line or paragraph by paragraph, but I did want to make some reference to the same point Mr Chiarelli raised.

Bill 151 having been referred to the committee, and

presumably it will be the subject of committee hearings and clause-by-clause in due course, I think it's premature to adopt a recommendation that says this committee supports Bill 151. I think we need to hear from the public on that and take a close look at the bill. I'm not quite sure why, as it wasn't part of the mandate of this committee to deal with Bill 151 at this stage, we need even refer to it. It may be that there are principles Bill 151 is based on that we may wish to affirm. However, I do have a problem with that particular recommendation.

The parliamentary assistant for the Solicitor General unfortunately couldn't be here, so I'm making some comments in that regard in his absence.

Mr Chiarelli: In response, I may have misspoken or you may have misinterpreted what I said. I was not suggesting that this committee recommend approval of Bill 151 in any way, shape or form. I was trying to suggest that there are a number of comments in here with respect to possible additions or amendments to the legislation, and I hope this committee would refer those recommendations, or such ones as we agree on, to the committee for consideration when Bill 151 is considered, because I think some of the suggestions and recommendations for amendments are very useful and worthwhile and certainly I would support consideration of a number of them. It was not to preclude anything else.

Mr Tim Murphy (St George-St David): On another issue, some of the government members went away yesterday indicating that they might be reconsidering their vote on yesterday's motion. I'm wondering if there's any news on that.

The Chair: We're here today on a standing order 108 designation: control of ammunition. Are you wishing to speak to that, or no?

Mr Murphy: I want to make a point about the ordering of our business. There was an indication that the government might come back with a different view, and I'm wondering whether there was any indication of that.

The Chair: Mr Murphy, it's an inappropriate time to raise your point. We've started in this committee to deal with this and we're into the debate about the report-writing, and you're saying, "Let's change the order of the agenda."

Mr Murphy: Yes, I guess I am.

The Chair: It's out of order.

Speaking to the report, further suggestions on how to proceed? We can proceed by going into the report on a page-by-page basis, if you like. Shall we do that? Mr McNaught can go page by page and people can comment

or make additions or changes as we do that. Agreed? All right. If there are comments by people, we can take them page by page.

Mr Charles Harnick (Willowdale): Before we start going through it page by page, I suggest we proceed with this report by at least agreeing on the structure we want the report to follow in terms of how the thing is going to flow, and then we can plug in the areas Mr McNaught has outlined. I think as a committee we really should decide on the structure we want to follow.

The Chair: Some suggestions?

Mr Harnick: Thinking about what many of the people who appeared before the committee said, it seems to me that every one of them indicated, almost without reservation, that the control of ammunition is preferably in the hands of the federal government. What they all said, almost unanimously, was that the best purpose they could see of the proposed Bill 151 was to use it to force the federal government to enact legislation dealing with the control of ammunition.

The reason they said that was because not a single one of the witnesses who appeared here thought a province could effectively control the sale and distribution of ammunition, quite simply because so much ammunition and so many guns come across the border unimpeded or come from other provinces, over which the province of Ontario really has no control. I understand as many as 5,000 rounds of ammunition come across the border every day.

It seems to me that what we should be doing is reciting the fact that all these reservations have been set out for us, indicating that, as a last resort, the province should enact a bill such as Bill 151 for the very purpose of forcing the federal government to deal with this issue, because dealing with it on a provincial basis is nothing more than a statement of something we would like to see be effected but that can't truly be effective in the hands of the provincial government.

I think that the report should be set up—

The Chair: Does what you are about to lead to fit into any one of the elements in the report so you could make a recommendation to that effect, or no?

Mr Harnick: What I think we ought to do is deal with all the reservations that people have about the province entering the field of ammunition control, because all the witnesses said it wouldn't be very effective. Then what they did say, almost to a person, was: "We wish the federal government would deal with this because they can deal with it in the most effective way, but because they won't deal with it, we hope the province does. If anything, maybe that will force them into dealing with control of the sale and distribution of ammunition." Then, I think, we go into what Bill 151 would accomplish.

But I think it's folly to say to the public that Bill 151 is going to be effective in dealing with the sale and distribution of ammunition. The reason we're going to pass Bill 151 is quite simply because we want to force the federal government into dealing with it, so that would be very much the way I think the report should be written. I don't think the report should make more of Bill

151 than really exists. All the experts said Bill 151 is a great idea if we want to go ahead and use whatever means are at our disposal to force the federal government to deal with an issue it should be dealing with. But let's not mislead the public who are going to read our report into believing that Bill 151 is the solution for the problems which exist with the sale and distribution of ammunition. Quite clearly, the weight of the evidence was that that is not so.

I don't know whether you want a motion or how you want to proceed, Mr Chair, but it would be my suggestion to the committee to lay this out in a way that provides some realistic perspective for the people who are going to read the report.

The Chair: Let me get some feedback from the members.

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Mr Chiarelli: First of all, I'm a little disappointed with the comments. Not that I disagree with the substance of what Mr Harnick referred to, but last week we made a decision to instruct the researcher to prepare a draft report. The researcher prepared a draft report. We have it before us. We've had an opportunity to review it. The draft report reflects more or less the substance of what the witnesses said when they came before us, and I think Mr Harnick's concerns can be met and debated as we go through the draft report.

It's fair comment that there was significant weight of submission that would hope that the federal government would move in this particular area. I think the accommodations to Mr Harnick's concerns can be met. For example, we do have two proposals. One of them is a recommendation to the federal government. Indeed, we can still proceed and make a fair recommendation and a strong recommendation to the federal government, in accordance with one of the options we have in the draft report.

That does not preclude us from proceeding with recommendations for a bill of one type or another, Bill 151 or some amended version of Bill 151, and we would certainly be able to provide a preamble in that part of our recommendation which indicates that we are moving into this area reluctantly because we would have preferred that the federal government move on it; indeed we're recommending that the federal government move on it. Notwithstanding that, we've had recommendations and we have a list of possible suggestions and recommendations with respect to all kinds of details that might be in the bill, and we can deal with that. We can deal with that within the framework or the premise that we're doing it because the federal government isn't there; we're doing it for leadership purposes. We might even want to recommend in our report that if Bill 151, with amendments or additions, is passed, that it be proclaimed only if the federal government has not moved in this particular area.

I think we can accommodate Mr Harnick's concerns. I think we can accommodate a strong recommendation on the part of the government members to urge the federal government to move. I think we can move with Bill 151, within Mr Harnick's premise, saying we're proceeding

with this in the absence of federal government action. The draft report is a good framework for us to deal with all aspects of it. I'm not excluding Mr Harnick's comments at all in dealing with this framework.

The Chair: Mr Chiarelli is speaking to the way in which the report is written and that Mr Harnick's comments could be accommodated, if that were the direction you choose. Page 9 is where this speaks to the kinds of things both of you are talking about.

Mr Chiarelli: The report talks about one option being a strong recommendation to the federal government for action. We can proceed with that. I see nothing contradictory about doing that and then looking at a reasonable ammunition bill that we could deal with and move along the legislative process, with Mr Harnick's premise that we would prefer the federal government to move and that we're moving in it reluctantly and we hope it pushes the federal government. I see nothing mutually exclusive about both options.

Mr Winninger: The point has been made about the restrictions on Ontario's jurisdiction in many of these issues. Certainly, it's true that we can't control the importation of arms and ammunition, nor can we necessarily govern what comes in from other provinces.

The section of the report that deals with constitutional issues might be a little one-sided in that when Professor Swinton came before this committee, she indicated that she believes the closer the law seems to traditional concerns of criminal law, the more it looks like the province is trying to fill a perceived gap in criminal law. It's mentioned in the report, somewhat obliquely, that gun control has always been a federal issue, and that's what Professor Swinton said when she came, that the provincial government is arguably trying to make gun control work better by working on the ammunition side while the federal government is working on the gun side. There may in fact be more weight given to a constitutional challenge should we recommend movement in the direction the report seems to be going.

I think we have to be quite clear about and mindful of the restrictions on our own provincial jurisdiction. It seems to me that we need to urge the federal government to move on this. At the same time, we need to examine a little further, in the context of the hearings on Bill 151, what our options might be as a province to control the distribution or sale of ammunition.

We have to be very careful just how we couch our recommendations. I agree to a certain extent with Mr Harnick, that we need to recognize the limitations of this province. I know he's quite shocked and surprised that I'd be agreeing with him, but when he speaks words of common sense and wisdom, I tend to support him. When the researcher is trying to incorporate our suggestions, both sides of the constitutional discussion have to be brought out a little more clearly so that the recommendation will fully recognize the limits on provincial jurisdiction.

I could go on, but I know Mr Mills wants to speak as well, and there are others on the other side.

The Chair: The discussion is on Mr Harnick's

original suggestion about structure and how to fit it in and so on.

Mr David Tilson (Dufferin-Peel): My comment is much to the same point as Mr Winninger was talking about. I may be getting into the possible recommendation number 1, but two legal people came to the committee, came voluntarily, as I understand it. I don't think we retained them. Is my assumption correct, that we didn't retain those individuals?

The Chair: We did give them a per diem, as we had agreed.

Mr Tilson: So they were providing a legal opinion, is what our position is.

The Chair: That's right.

Mr Tilson: Thank you. I wasn't aware of that.

Mr Gordon Mills (Durham East): I would have liked to be here in the beginning to make these comments. I'm here as the parliamentary assistant to the Solicitor General.

I want to remind the members of this committee that Bill 151 was not referred to this committee. That's the first point I want to make.

The second point I want to make is that I'm most concerned about the confidentiality of this report, which was reported upon in the press over the weekend and widely discussed. I had telephone calls from people in the media asking me to comment on it, which brings me to the third and final point I want to make.

I sat here last week as a duly subbed-in member of this committee. This report was given to the committee members on Friday for their perusal. I was denied that report. My office called about this report and we were told we were not entitled to that report. I'm quite perturbed about this because I, in my role, report to our minister and the ministry staff, and we had no opportunity to discuss this over the weekend whatsoever. Despite my staff making several phone calls to tell them that I was subbed on this committee, I was denied this report, which did not arrive until yesterday afternoon by fax at about quarter to 1. I just want to get those things on the record.

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The Chair: Mr Mills, I'd like Ms Bryce to comment on that for the record as well.

Clerk of the Committee (Ms Donna Bryce): I just want to say that we did neglect to send you the copy of the report with the other members Friday afternoon. On Monday morning, when I was reviewing the material, I realized that we had not given it to you, so I called your office and told them I would be sending it over. To my knowledge, nobody in my office said you were not entitled to the report.

Mr Mills: I beg to differ, because my legislative assistant told me she had considerable discussion with somebody in your office and they were denying that and told her in no uncertain terms, "You're not getting it." I take offence at that.

The Chair: Thank you for your comments.

Mr Mills: Before we carry on, is there any comment in terms of the confidentiality of this report? What

happened? It says here it's confidential.

The Chair: Mr Mills, we don't know what happens if information is leaked when we write on a document that it is confidential. Other than your reminder for people to remember that the report is still confidential, I'm not sure what else we can say if information is somehow leaked to someone in some way or other.

Mr Mills: As the parliamentary assistant to the Solicitor General, I was embarrassed, because I was asked to comment about a leaked document that I'd never seen.

The Chair: We understand. You made your point.

Mr Chiarelli: I was just going to move that we declare this not a confidential document.

Mr Tilson: Just a point of order on the matter raised by Mr Mills. We do receive documents, and this is an example, where it's stamped "confidential." We got a memo from the clerk's office saying it is confidential until it's been tabled with the House. If this is confidential—and that's an interesting topic for debate—should these be open proceedings? I'm just returning to Mr Mills's point. Otherwise, why are we stamping things "confidential" and saying they're confidential?

The Chair: In the future, we should all decide prior to issuing a document whether or not we want it to be confidential. It may be that members don't want it to be confidential in fact, that it can be a very public document. That's something we should decide in advance of a document coming to us so we don't have to worry about this particular problem. But given that we didn't, we tend to put "confidential" on documents, as a general rule. I'd rather move on, unless there's something else to this particular issue.

Mr Tilson: Are you saying that these are not confidential proceedings?

The Chair: Mr Chiarelli said, "I move that this not be confidential." We can deal with that immediately and have a discussion about that, if you want, or just vote on that.

Mr Winner: This is not confidentiality, but it's related to that issue. When we give very general instructions to our researcher, it places him in a very difficult, sometimes compromising position. He has to guess about what this committee's recommendations might be. The draft report gets circulated; it says "confidential" on it; it says it on the letter; it's brought home. Someone here who received a copy leaked it; that's quite clear. The press don't get these copies just by magic.

This won't be the last report of this nature, and we certainly had a lot of trouble with the draft report on victims of crime that was leaked. It appears to the people who read these newspapers that this committee has come to some conclusions and has made some recommendations it's never really had a chance to discuss.

My point is this. Perhaps in the future we should consider our past experience and whether we should be asking the researcher to draft recommendations, or whether that's something more properly done here. Then we don't have this problem where the parliamentary assistant to the Solicitor General is approached about

recommendations this committee made that we're disavowing today or in the future.

The Chair: I understand the point. I'm not sure whether we want to solve the issue of confidentiality of reports today, other than the fact that a number of you made statements that this has been let out and that that constitutes a problem. For the future, we can talk about how to deal with reports, but I'd rather not do that at this moment with respect to how we deal with documents in general.

Mr Winner: I realize that, but let's not forget our unfortunate experience this time.

The Chair: I agree, and those comments are on the record. Can we move on?

Mr Tilson: So this is not a confidential report. We didn't vote on it, but is that—

The Chair: Well, he's moving that this document not have "confidential" on it. You could put "draft" on a document.

Ms Christel Haeck (St Catharines-Brock): That's actually what I was going to suggest. One of the problems in putting "confidential" on it is that it has a certain aura about it that it really, I would think, doesn't quite deserve. It is in fact a draft. It is at this point the culmination of Mr McNaught's work, and obviously there are some differences of opinion about what's in the document.

Personally, with regard to Ms Swinton's testimony, my recollection was that she said that any movement on the part of the province would in all likelihood be open to a challenge in terms of going into an area that was normally reserved for the federal government, though she said it would seem that the province might be acting on a public health issue. There was obviously some doubt in her mind. I didn't think she gave an overriding approval to this particular issue, but I, along with others, stand to be clarified on that issue.

To me, following up on some of the discussion of my colleagues, and living where I do along the border, it is really an issue for us, a lot of the time, of what is coming across the border and it is a jurisdictional issue. The federal government, to my mind, has to be the largest player in the effort of controlling guns and ammunition.

How this has been written is really a concern for me, this sense of approval of how some of the legal people we had invited to attend might have viewed this particular issue. I didn't come away with that impression. I came away with the impression that the two constitutional experts were divided on this, not as much in favour. That's my recollection. As I say, I can always stand to be corrected, but having listened to the two presenters, particularly Ms Swinton, I felt there was a difference of opinion.

The Chair: Mr Chiarelli, on the issue of "draft" versus "confidential."

Mr Chiarelli: I'm going to move a motion now that the document, Report on Control of Ammunition and Community-Based Crime Prevention Initiatives, be deemed to be a public draft document for use by this committee. That's my motion, and I want to comment on

it. I want to say that I accept Mr Winninger's comments and I accept Mr Harnick's comment. By way of example only, I want to suggest that if we look at the recommendations, it says "possible recommendation No 1" on page 9 and it goes to "or, possible recommendation No 2." I want to suggest that we can incorporate the substance of both of those recommendations within the premise suggested by Mr Harnick.

The Chair: Mr Chiarelli, could we just separate the two? I wanted to come back to that as a separate issue.

Mr Chiarelli: I want to comment on them together first, and then we can maybe consider separating them. For example, look at possible recommendation 1: "The committee supports, in principle, controls on the sale of ammunition. It also recognizes that the province would have constitutional authority to legislate in this area. However, it is the committee's view that ammunition control is, in essence, a form of gun control. As such, the committee believes this is an issue that can be most effectively dealt with at the federal level"—and I might suggest slightly different wording from here on—"on a national basis. However, the committee recommends that Ontario enact its own ammunition control legislation. This might encourage the federal government to take leadership in this area."

Continuing, "In addition, the committee believes the practical difficulties associated with the enforcement of provincial ammunition control legislation, particularly if other provinces do not follow Ontario's lead, would"—and instead of saying "outweigh the legislation's benefits" you could say—"diminish the legislation's benefits."

Down below, the second paragraph, you might consider saying, "The provincial government should urge the federal government to regulate sale of ammunition" etc.

Making that kind of change in recommendation 1, we can move into recommendation 2 and say that the committee, having delivered a strong message to the federal government to move in this area and having decided that in the absence of federal government action we would want to look at a provincial bill, then the provincial bill could include the type of recommendations included on pages 11, 12, 13 and 14, and we could basically accommodate both points of view at the same time.

That's the rationale behind my motion to consider this a draft public document.

The Chair: Speaking to the motion about whether this should be a draft report or a confidential report, any further discussion? All in favour?

Interjection.

Mr Chiarelli: The motion is only to consider this a draft public document, and then that'll be a starting point for our discussions.

The Chair: Should I put the motion again? Do you want to speak to it? Do you want to recess? What do you want to do?

Mr Winninger: I would like a two-minute recess.

The Chair: A two-minute recess.

The committee recessed from 1633 to 1641.

The Chair: Back to the motion Mr Chiarelli made.

Mr Mills: I have a friendly amendment I want to make. I want to have an amendment in the beginning of this recognizing that this report has not been endorsed by the committee and then get on and say that it's a draft. We want to make it clear that this draft report hasn't been endorsed by the committee. I understand that once we pass that, if we do, we're going to go on and examine this document page by page and make amendments and deletions and recommendations.

Mr Chiarelli: Prior to that amendment, could we rephrase the motion that's there?

Mr Mills: Try it.

Mr Chiarelli: "Whereas the committee has not yet dealt with the substance of the draft report, and whereas the committee wishes to deal with the substance of the draft report, in order to facilitate discussion of the draft report we hereby move that the report be deemed a draft report."

Mr Mills: It's a drafty amendment, but I'll accept that; I think that's all right. What do you think?

The Chair: Very well. We're ready for the vote. All in favour of the motion? Any opposed? That carries.

Mr Chiarelli: Did I talk too fast?

The Chair: No, that was rather long, but it did the trick.

Can I recommend, unless Mr Harnick has any other point based on the discussion, that we go back to Mr McNaught's report and go page by page.

Mr Harnick: I move that we just accept the report in its totality.

The Chair: Okay, there's a motion before us.

Mr Chiarelli: What happened to my motion?

The Chair: It passed.

Mr Chiarelli: So this is a draft document?

The Chair: Yes, and now Mr Harnick has moved a motion and we're open for discussion on that.

Ms Zanana L. Akande (St Andrew-St Patrick): The motion Mr Harnick has just moved is in contradiction to Mr Chiarelli's motion.

The Chair: No. All Mr Chiarelli's motion did is say that this is a draft document that is yet to be dealt with by this committee.

Mr Chiarelli: All we've done, Ms Akande, is accept this as a tabled report.

The Chair: Mr Harnick has moved a motion that we accept this report as is. Discussion on this matter? We're ready for the vote? All in favour of the motion? Opposed? The motion is defeated.

Let's go through this page by page and ask people to speak to anything on each page by way of additions or changes.

Mr Chiarelli: Let's take the word "confidential" off.

The Chair: We've done that. Page 1, on the preface: Any discussion? Any comments? Seeing none, page 2.

Mr Mills: At page 2, in the introduction, it says, "More generally, violent incidents such as 'home invasions' and 'carjackings' seem to have become routine

news." I am proposing an amendment, that we take out the words "such as 'home invasions' and 'carjackings,'" as they seem to me to have a Metro focus, and replace the words "become routine news" with the words "become more frequent." I think this introduction and statement are a little alarmist. I move it be amended to read, "More generally, violent incidents seem to have become more frequent."

Mr Chiarelli: I don't disagree with you, but I would suggest it's not particular to Metro. You might achieve the same thing by saying, "More generally, violent incidents such as 'home invasions' and 'carjackings' seem to have become more routine news, particularly in urban areas." Does that cover the sense of what you're trying to say?

Mr Mills: I still think that's not the wording we want. It's a bit alarmist.

Mr Winninger: I tend to concur with Mr Mills, surprise, surprise. What we do know is that violent crime among young offenders has risen, in fact doubled over the past few years, but other indicators of crime have not risen dramatically. It may be that they're being reported in a more lurid and sensational way, but the fact is that the level of crime has not risen significantly over the past few years. For that reason, the wording of the introductory paragraph strikes me as being a little on the alarmist side as well and it could be toned down to a more matter-of-fact style of writing.

Ms Haeck: I wanted to again put a reflection on it from Niagara. I'm unaware of any home invasions or carjackings that have occurred in our area. I'm not even aware that anything of this sort has happened—

Ms Akande: Where do you live?

Ms Haeck: It's relatively peaceful, though if you go to Buffalo it's been known to happen. I was in the blizzard of 1977 in Fort Erie—13 feet of snow. It was great fun.

In any case, I truly don't see that at all. That's really putting hyperbole on what's happening in most parts of the province, even, I would say, in most parts of Metro. These are not necessarily things that are happening every day of the week.

Mr Harnick: It's no surprise that I will disagree with the last three views being expressed. I think you have to read the second paragraph in conjunction with the first paragraph to see that there is a sense of balance being sought.

The fact is that in the first paragraph there is no mention about crime statistics of any sort. It merely says there have been a number of issues. To change the first paragraph I think would belie the reason we ended up having this issue referred to the committee. I don't think there's any blame. I mean, if you put this first paragraph in, we're not blaming the government for the fact that this is happening. I think that's a certain paranoia you have.

In the first paragraph, all those things have happened, they've caused this issue to crystallize, and that's the reason it's here before the committee. But the second paragraph is very balanced:

"Some observers point out that the statistics on violent crime do not support the view that there is a serious crime problem in Ontario. Others believe that violent crime reflects a moral crisis in our society and, as such, is a problem beyond the capacity of legislators to address. Still others cite economic factors as the source of violent crime.

"While the committee is cognizant of these views, it is also sensitive to the clear demand of the public that governments take immediate action to address the problem of violent crime. Accordingly, the committee, in this report, has set out a number of steps" etc.

1650

But the fact is, we have violent incidents, we have home invasions, we have carjackings. We had the murder of a young woman in a downtown Toronto restaurant. We had the drive-by shooting in Ottawa. That is exactly why these issues crystallized and are in front of us now. If these things didn't happen, and if we were afraid to talk about them, we wouldn't be sitting in this committee dealing with this issue.

I say to you, take your heads out of the sand. That's why we're here. ViVi Leimonis was killed while she was having dessert in a restaurant. That was something that shocked the city of Toronto and was very much responsible for ultimately having this issue sent to this committee. Do we want to deny that? If you want to deny that, then say so. Say these things don't happen in the city of Toronto and see how your report is received. You'll have no credibility at all.

Mr Chiarelli: I'm going to suggest a change in wording around the sentence that was raised by Mr Mills, and it will not change the substance of what Mr Harnick was saying. It would read something like:

"More generally, violent incidents have become routine news, with increased media profile, and the police are telling us that the use of handguns in the commission of robberies and assaults is increasing. As well, violence in our schools has increased over the last several years."

I don't think anybody can deny those what I feel to be facts. Indeed, the Minister of Education has adopted a policy which is premised on an increase in violence in the schools. I don't think we can contest that "More generally, violent incidents have become routine news, with increased media profile," and also that the police indeed are saying that the increase in use of guns is a fact we have to deal with.

We're not commenting on the overall statistics. We're not getting into that fight. We're just making some very plain, simple statements that are behind the reason we're here today. Does that address your concerns, Gordon?

Mr Mills: I could buy into that if you said "more frequent" rather than "routine." It seems like it's happening every day, and it isn't.

The Chair: I think it would be useful to repeat that, Mr Chiarelli. If you're going to do that, can I suggest that rather than adding the violence in the schools as a separate thought which doesn't seem to flow, you might want to build it in in the beginning.

Mr Chiarelli: I'm just using that as a second point.

We're saying that the police are telling us that the use of guns in the commission of robberies and assaults is increasing, and there is also evidence that violence in the schools has increased. Basically, I'm putting those two points together as part of the triggers that are pushing us into this exercise.

Everything stays the same up to "in this province." Then starting there, we say:

"More generally, violent incidents have become routine news, with increased media attention" or "profile, and the police are telling us that the use of guns in the commission of robberies and assaults is increasing; as well, violence in our schools has increased over the last several years."

Mr Mills: I hate to belabour the point, but I've said it about three times. I have difficulty with "routine news." I'm saying we'd be happy with "more frequent," because I don't subscribe to this as being "routine".

Mr Chiarelli: I agree. "More generally, violent incidents have become more frequent, with increased media profile."

Mr Winner: With reference to your point about increasing violence in the schools, I don't deny that. But if you're going to put in a reference to that in the introduction, we have to bring in reference to our violence-in-the-schools strategy.

Mr Mills: Later on.

Mr Winner: Later on. It's either one with the other or not at all.

Mr Chiarelli: You may want to put "which has necessitated a provincial government policy in this area," period, and then it's addressed.

Mr Winner: If you're going to raise it, we need to have a paragraph indicating that the government has taken the initiative with the anti-violence strategy in the schools and say what it is.

Mr Chiarelli: "Has taken certain initiatives."

The Chair: Mr Winner is suggesting that if we support that language, he will be proposing some change or amendment at some point.

Mr Chiarelli: I don't see any problem putting in the reality of the Minister of Education responding to the need in that area.

Ms Akande: I'm very agreeable to the way you have included "increased media attention." I wonder if we could change it around so that the horse is before the cart and say, "More generally, violent incidents seem to receive increased media attention and so have become more frequent news." I think that's really what's happened. The fact that the media focus more intently on those particular incidents, almost to the exclusion of all else—because let's face it, it does sell papers—is the reason it has become more frequent news.

That's what the second paragraph is really saying. A lot of people are saying that the statistics don't support that it's more frequent but that really it's the media. I think that would leave the same two clauses in but put them in a way that would almost explain the very second paragraph that you want included.

Mr Chiarelli: Can you phrase exactly what you mean so we can put it into context?

The Chair: If you can just paraphrase the sense of it. This will come back to us, obviously, for a final review.

Ms Akande: "More generally, violent incidents have received increased media attention and so become more frequent news." That's not polished, and I would be willing to do it. It says the same two things, but it really talks about cause and effect.

The Chair: Do you like that, Mr Chiarelli?

Mr Chiarelli: That's fine.

The Chair: Very well. Moving on, on the same page.

Mr Mills: The next paragraph I have no problem with, but on the one after that, the third paragraph, I have to say something. If you want to get some opinion about the second paragraph: Is that okay? Is everyone happy with that? Okay.

Let's move to paragraph 3. It says, "While the committee... is also sensitive to the clear demand.... Accordingly, the committee, in this report, has set out a number of steps it feels the provincial government can take in the area of ammunition control and community-based crime prevention initiatives."

I think this gives an impression that the government has done nothing, and I want to draw to your attention the gun amnesty and the provincial weapons enforcement unit as recent examples of the government's response. Rather than doing nothing, I think we have done quite a bit, and I would like to have that recognized in that paragraph: "...to address the problem of violent crime. Accordingly... have introduced the gun amnesty and the provincial weapons enforcement unit as examples of the government's response."

The Chair: Mr Mills, the way you're phrasing it makes it appear that that is the answer to this question, versus other things that flow out of this report.

Mr Chiarelli: Can we also be more specific on what the government hasn't done?

Mr Mills: My reflection on this paragraph is that it suggests that the government needs to take immediate action to address this problem, as though we've done nothing. But I'm saying to you, Bob, that we have done something. Those two initiatives should be in there. We've got the amnesty and we've got the provincial weapons enforcement unit as an example of our government's response to this problem.

1700

Mr Chiarelli: Can we address that by saying, "While the committee is cognizant of these views, it is also sensitive to the clear demand of the public that governments"—you see, they're talking governments generally here—"in addition to steps already taken, take additional immediate action..." without being specific?

Mr Mills: Then it goes on to say "steps it feels the provincial government can take in the areas of" these initiatives. It doesn't mention that we've done some initiatives.

The Chair: Mr Chiarelli's saying that rather than naming the specifics, we can say "in addition to some of

the initiatives the government has already taken”—

Mr Chiarelli: That “it take additional action” or “additional measures to address the problem of violent crime.” We’re saying some measures have been taken. We’re not specifying them. You can list them all you want, till you’re blue in face. We’ve acknowledged they exist without going into specifics. If we want the option to say you haven’t taken enough, from a political perspective, we can always say that outside the report. We can simply say that we’re recommending that additional steps be taken immediately.

Mr Mills: Yes. I just raised those two as two issues we’ve done.

Mr Harnick: I think it’s fine the way it is, but if Mr Mills wants to start talking about government accomplishments in this area, they’ve been few and far between. I recollect that the amnesty program was suggested in a question by Mike Harris. It wasn’t until Mike Harris asked that question in the Legislature that the Solicitor General thought an amnesty program might be a great idea, and thereupon he developed this amnesty program.

Mr Mills: That’s not quite true.

Interjections.

Mr Harnick: Just a second. All I’m saying is, if we want to start talking about one’s accomplishments, let’s talk about everyone’s accomplishments, not just the government’s. It’s really a waste of everyone’s time to sit here if the members of the government, particularly the parliamentary assistant, have some sort of paranoia in the sense that every paragraph is going to have to exonerate the government for this, that or the other thing, or that every paragraph is going to be taken as a criticism of the government. That is not the spirit in which we should be writing this report.

I look at this report and I don’t see that there’s any criticism of the government in there. We’re trying to sit down as a committee in a non-partisan way and write a report. If with every suggestion we say, “The reason that suggestion’s being made is because the government’s doing a terrible job in the area of law enforcement and we better put in something to say it’s not,” we’re just wasting our time here. I read that paragraph and I don’t see any criticism of the government in there. If that’s the way we’re going to proceed, I just don’t want to waste my time.

Mr Chiarelli: I’m sure that both Mr Winninger on behalf his party and Mr Harnick on behalf of his party would acknowledge that Mr Christopherson and Mr Harris probably have the same level of mental acumen and they probably came up with the idea for the amnesty at the same time.

Mr Harnick: I won’t acknowledge that, because it was Mr Harris’s idea.

Ms Akande: I have a solution. Why don’t we just throw in the word “additional”? “Accordingly, the committee, in this report, has set out a number of additional steps it feels the provincial government can take in the areas of ammunition control and community-based crime prevention initiatives.”

Mr Harnick: Additional to what? Additional to the

amnesty they stole from Mike Harris. You don’t say that.

The Chair: If you simply say, “Accordingly, the committee, in this report, has set out a number of additional steps”—

Mr Harnick: “That can be taken.” Leave out the words “provincial government” altogether.

Ms Akande: Now you’re being testy.

The Chair: Ms Akande has suggested “has set out a number of additional steps.”

Mr Harnick: I don’t want to leave the wrong impression. I just don’t think it’s productive to sit down and try and do this report if everybody is doing it with a view either to take credit for something they did or didn’t do—I mean, if we’re going to be paranoid that this is a criticism of the government, let me put it on the record: It’s not a criticism of the government. It’s a committee report to recommend additional things that the government can be doing. If you want to put the word “additional” in, go ahead and put it in. But I don’t think it’s productive that we sit here and some members view every line in this as a criticism of the government. That’s not the purpose.

Mr Chiarelli: I was going to move a motion basically adopting what Ms Akande has suggested. So it reads, “While the committee is cognizant of these views, it is also sensitive to the clear demand of the public that the provincial government take additional, immediate action to address the problem of violent crime.”

The Chair: Is that a wording you can live with?

Mr Mills: It sounds reasonable to me. We just want to clear up that void that nothing is happening. That’s fine.

The Chair: Okay. Without taking motions in these areas, as long as we get a general sense of agreement, I prefer not to take motions.

Mr Winninger: I just was a little concerned about the style of “additional, immediate action.” “Additional action immediately” sounds better to my ear, but I could be wrong. It happens once every century.

Mr Chiarelli: Do you want to take “immediate” out and put in “timely”? “Take additional, timely action”?

Mr Winninger: I’m using your words. I’m just saying “additional action immediately.”

The Chair: I think we’re saying the same thing.

Mr Chiarelli: Yes, “take timely action” or “timely steps.” Are you not a former teacher? Why don’t you correct our grammar?

Ms Akande: I am. I just heard it was rude to do so.

Mr Winninger: I’m comfortable with “timely action.” I’m comfortable with “additional action.”

Mr Chiarelli: “Additional timely action.”

Mr Winninger: “Additional and timely.”

Mr Mills: “Additional and timely action.”

The Chair: Okay? Moving on, so we can try to finish the report.

Mr Mills: I want to move along, Mr Chairman, to page 3 and the part where it says, “In this regard”—

Mr Chiarelli: Excuse me. Can I go back to page 2?

The Chair: We haven't finished page 2? All right.

Mr Chiarelli: "Currently, the only restriction on the purchasing of ammunition is that it is illegal to sell ammunition to a person under 16 years of age, unless the person holds a valid..." I would like some reference to be in there, because it's the fact and I've had personal experience and I've referred to it in Hansard in the House, that even the 16-year-old age limit is not being respected. For example, I had a personal discussion with the owner of a hunting and fishing store in my riding and he basically said he has no problem and in fact he does sell to 14-, 15- and 16-year-olds. I think there should be some reference there to the fact that even the 16-year age limit is not being enforced. It's certainly not being enforced at the provincial level by municipal police forces. I don't know whether any of the federal agencies are enforcing it, but it is not even being enforced. They don't ask age limits. They don't ask for proof of age.

I would like to suggest here some wording along the lines of, "Currently, the only restriction on the purchasing of ammunition is that it is illegal to sell ammunition to a person under 16 years of age (with questionable enforcement of that age limit)," in parentheses, "unless the person holds a valid minors..." etc. I'd like some reference in there parenthetically that there's very limited enforcement of the age limit at present. I'm willing to leave that as a direction to the researcher to put in a parenthetical comment about the fact that there's limited enforcement even of the 16-year age requirement.

1710

The Chair: If there is agreement to that, I was going to suggest the same thing, that perhaps we leave it to Andrew to rephrase rather than adding it parenthetically, so it flows a little better. Is there agreement with that?

Mr Mills: Basically, it's pretty straightforward and harmless, but I would hate to have any connotations that young people are prone to this. It's a general statement you're making here, and I think we have to be quite careful about that. I personally have a problem. If someone goes into a store to buy ammunition and they're not a licensed driver and they have no other documentation on them, does that mean that person has to run home and get a birth certificate or something?

The Chair: Mr Chiarelli is raising the question of enforceability. He's saying that even though it is illegal to sell to individuals under 16 years of age, enforcing that isn't happening.

Mr Mills: I think we have to be careful with talking about young people generally, that's all.

Mr Chiarelli: In a number of instances, including the Ottawa drive-by shooting, it was very clear that it was legally store-bought bullets used in an illegal gun, and in fact we have some indication that in the recent fatality of a policeman again it was legally purchased ammunition in an illegal gun.

The Chair: If people feel this is an issue—

Mr Mills: I don't think it's a big issue. I just wanted to make those comments. I don't think it's an issue to keep on about.

Mr Harnick: I think we should be somewhat careful in adding things that we really didn't hear from the people who appeared before us. We have to be careful about making up scenarios that we believe exist but don't have any empirical evidence to indicate that it's so. What impressed me about this paper, having read it, is that it sticks very much to the things that people came here to say. When we start adding things that we may believe are fact yet we really don't have anything to base that on other than our personal belief, we have to be very careful.

If we're adding words that indicate there's a significant level of non-enforcement by ammunition sellers who sell habitually to people under the age of 16 without proof, we don't know that and no one came and told us that.

Mr Chiarelli: That's not true.

Mr Harnick: Then show me where that was in the evidence, and then we can put it in.

Mr Chiarelli: There was a representative from the Metropolitan Toronto Police, and I specifically raised the question of young people going into places where they sell ammunition and buying it underage. I referred at that time to the incident in Ottawa as young people, underage, buying it legally over the counter, and there was agreement with my line of questioning that that was a problem. I remember very specifically asking that.

I agree with your general comment that we should be very careful, but I don't think we should be limited to what people said. We should be free to comment and consider our own sense of what could be in the report and discuss it. But in this particular instance I remember specifically raising that with one of the witnesses.

Mr Harnick: Just to reiterate—

The Chair: Mr Harnick, I think you were quite clear.

Mr Harnick: If I may, and I know how much this upsets the Chair—

The Chair: It doesn't; your points were very clear.

Mr Harnick: If we go a little further on in the paper, it does talk about some of the problems and the difficulty enforcing the regulations that now exist. I think that is covered, but it's covered later on in the paper.

Mr Chiarelli: If we can find the reference where it's covered, I'll agree to delete my suggestion from this area.

Mr Harnick: Andrew, where is that?

Mr Andrew McNaught: I think what you're referring to is discussion of the problems in dealing with importation and interprovincial transportation of ammunition.

The Chair: Page 8, "Regulating Ammunition Purchased Outside the Province." Is that where it would be?

Mr McNaught: That's my recollection.

The Chair: Mr Winner, you wanted to comment on Mr Harnick's remarks.

Mr Winner: I support what Mr Harnick said around trying to rely on empirical evidence presented before this committee. I had heard Mr Chiarelli refer to anecdotal evidence, which I think helped inspire this legislation he brought forward, that there may be dealers in Ottawa who deal routinely, or infrequently, with people under the age of 16. Whether they're careless or

reckless or intentional, we don't know. But this committee really didn't hear that kind of evidence. I wasn't here when you led your question, but it seems to me we'd need a little more to go on in that regard. I don't know that it really detracts from this report not to refer to it.

Mr Chiarelli: You're right. I drop my suggestion.

The Chair: Very well. Moving along, page 3, Mr Mills.

Mr Mills: It's in the first full paragraph on page 3. "In this regard, the committee focused particular attention on a private member's bill currently before the House, namely, Bill 151, An Act to control the Purchase and Sale of Ammunition." Mr Chairman, I submit to you that reference to this bill should not be included in this committee report. The bill was not submitted to this committee and it's not in its terms of reference. It's slated to be discussed by this committee at a later date, so therefore no reference to this should be made at all.

The Chair: Just as a matter of information, we had agreed as a committee to pass Bill 151 on to the constitutional lawyers. And others as well? All deputants or the constitutional lawyers?

Clerk of the Committee: The constitutional lawyers in particular and anyone else who is interested.

The Chair: So a number of people made reference to that based on the general agreement to do that.

Mr Chiarelli: In view of the comment we just had, we can't suck and blow at the same time. There are witnesses who came here, including Mrs de Villiers and a number of others, who basically referred to Bill 151 as a way of the province showing leadership to the federal government etc. The police witnesses who came before us referred to Bill 151 in various aspects etc. If we're going to say on the one hand that we've got to rely on what the witnesses were talking about, if they spoke about Bill 151, I think it's appropriate to make reference to it. We can't have it both ways.

Mr Mills: Yes. I'm just trying to make the point that the bill was not submitted to this committee for examination. We're not doing that.

The Chair: "In this regard the committee focused particular attention on a private member's bill currently before the House."

Mr Chiarelli: We could change that to indicate, "In this regard, notwithstanding the fact that Bill 151 was not part of the motion of reference"—or the reference motion—"the committee and/or various witnesses focused attention on private member's Bill 151" blah, blah, blah. That's probably closer to reality. I have no problem putting it in that way, if that addresses your concern. But the fact is, that was coming out of the lips of all the witnesses.

Mr Winner: Rather than deal with it in such a roundabout way, why can't we say, "In this regard, witnesses were invited to comment on a private member's bill," rather than saying we "focused particular attention"? That more accurately reflects what was done.

Mr Chiarelli: That's fine.

Mr Harnick: So there's no misunderstanding, why don't we just say that and, in addition, that that private member's bill "will be the subject of deliberations at this committee at a later date" in terms of the clause-by-clause aspect of it?

The Chair: Mr Harnick, you said, "In this regard, witnesses were invited to comment on a private member's bill currently before the committee," which means it's in this committee currently before us.

Mr Harnick: Well, no. "Currently" means right now.

The Chair: "Presently"?

Mr Harnick: "Currently awaiting deliberations before the justice committee." Is that acceptable?

The Chair: Sure, because we're in fact dealing with that next month or so. Is that all right? Very well.

Mr Mills: Mr Chairman, the next comment I have to make is under the title "Constitutional Issues" on page 3. You go down to the second paragraph and it says, "The committee therefore... from two constitutional law experts." I'd like to make the point that both of these professors agreed that there would be a constitutional challenge to such an act. Professor Swinton did mention cases where a law has been successfully challenged when it moves into federal territory such as gun control.

I'd like to add that we have before us the concern of the Toronto crown attorney, Calvin Barry, over the constitutionality of an act to control the sale of ammunition, and I don't see that mentioned under "Constitutional Issues." I would suggest that Crown Attorney Calvin Barry's concern over constitutionality be included in that paragraph.

Mr Chiarelli: I think the comments that were made on challenging the constitutionality were made in the context of the fact that just about any bill you're dealing with, particularly in the criminal area, is going to be looked at from a constitutional point of view, from a Charter of Rights point of view. I think the weight of evidence given by the two constitutional experts, who were independently, objectively chosen by the clerk, not by any of the parties, indicated that yes, it is an area where the provincial government can legislate, particularly if you restrict it to within the province, obviously.

It's completely understandable that any constitutional expert, on just about any issue, will tell you there's a risk of constitutionality being challenged in the courts. As any criminal lawyer or defence lawyer will tell you, one of the first things you look at is the constitutionality; you try to find anything to hang your hat on from a constitutional or charter point of view. Legitimately, any lawyer defending someone in a charge coming out of a provincial bill on the purchase and sale of ammunition would almost on a knee-jerk reaction say, "Let's challenge the constitutionality." I think it's in that light that both constitutional experts were saying it may be challenged. But they also said quite clearly, "If you stay within the four corners of the provincial jurisdiction, the chances of those challenges being successful would be very greatly diminished."

Mr Winner: I don't know if I need to reiterate my earlier point, but for a fair and balanced report, on what

we heard from Katherine Swinton, for one, we need to incorporate into the discussion there some of the negative things she said about the province acting on ammunition control. I had a quote I cited earlier which I can give to the researcher, although he probably already has it, that gun control has always been a federal issue; that the provincial government is arguably trying to make gun control work better by working on the ammunition side while the federal government is working on the gun side. If this is seen as a further restriction on the use of firearms, there may be even more weight to a constitutional challenge.

I think all the caveats that were built into Ms Swinton's address should be reflected in the discussion. I know she mentioned at a couple of points—I don't have the paper here but I re-read it last night—that we're open to a constitutional challenge here. She couched her recommendations in that language and I think it needs to reflect a little more some of the caveats she cited.

Mr Chiarelli: Can I suggest that rather than putting in quotes from witnesses etc, we might simply want to consider, "One of the constitutional experts, Professor Swinton, indicated that careful drafting of the provincial bill would be necessary in order to help minimize any constitutional law challenges." I think that's the substance of what she was saying.

Mr Winninger: That's fair comment, careful drafting, but also consideration of what lies within provincial jurisdiction in a substantive sense. It's drafting and substance.

The Chair: So you're saying, paraphrase what she might have said as opposed to actually quoting it.

Mr Chiarelli: We're basically saying that there are possible areas of constitutional challenge and these can be minimized by the provincial government staying clearly within the area of jurisdiction which they outline the province has.

The Chair: Before we go to Mr Harnick, is that all right?

Mr Mills: I just wonder where the crown attorney fits into this. We're leaving him out and I think his testimony was quite strong and quite powerful. He said unequivocally that the ammunition control lies in the federal government's hands. He made that statement. I have it here. He says the most effective way to deal with this is with the federal government, no ifs or buts, and that reference is not in this report. There's no mention of that gentleman.

Mr Harnick: Mr Mills is quite correct, but I don't think the crown attorney's remarks were in the area dealing with the constitutionality of the government legislating ammunition control. I agree with Mr Mills that that should be in here probably in a more forceful way than the first draft indicates.

But I agree with Mr Winninger that it's very difficult to be unequivocal about a constitutional position in absolute terms. I think that's what you were saying, and I think the things Mr Winninger has pointed out should probably be in this section.

In addition, the final paragraph that states, "Based on

the legal advice outlined above, it is the view of the committee that the province has jurisdiction to enact legislation regulating the purchase and sale of ammunition within the province," I believe is somewhat too absolute. I think it should be recognized that "In all likelihood, based on the opinions we have, the province has jurisdiction," but I don't think I'd like to say it in absolute terms. I'd say that "in all likelihood" they have that jurisdiction, but I don't think anybody really knows until it's litigated. I wouldn't like to give the impression to the public reading this document that that's an absolute certainty.

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Mr Chiarelli: I have no problem with putting something in one of the paragraphs on the bottom of page 3 or the top of page 4 indicating the type of caveat or caution that Professor Swinton raised, particularly the advice that you've got to be fairly specific. I'm happy to leave that sort of caveat up to the researcher to draft a sentence to insert somewhere in that context.

I also have no problem with Mr Harnick's suggestion to add the words "in all likelihood." I guess we should say, "Based on the legal advice outlined above, it is the view of the committee that the province, in all likelihood, has jurisdiction to enact legislation." It probably should be inserted there. I have no problem with that.

The Chair: Did you want to comment, Andrew?

Mr McNaught: My interpretation of Professors Swinton and Hogg seems to be a little different from what others have heard. I think the so-called negative things Professor Swinton mentioned were raised in the context of a hypothetical argument against what she was advising the committee. I'd just note that Professor Hogg read Professor Swinton's paper prior to his presentation to the committee and he says, quoting from Hansard, "I want to say that I completely agree with her views" as expressed in those notes. He goes on to say: "I have no serious doubt that it would be. It seems to me that the province does have the power to control the sale and purchase of a dangerous product like ammunition. The power to do that comes from the province's power over property and civil rights in the province."

Professor Hogg very clearly interpreted Professor Swinton's opinion as saying that the province had jurisdiction in this area. That's why my statement was maybe a little more absolute.

Mr Winninger: But you agree that there are some caveats in Professor Swinton's—

Mr McNaught: As I was saying earlier, I think Professor Swinton raised those in the context of a hypothetical argument against what she was saying to the committee. But you might want to read Hansard.

Mr Winninger: At least two of the members and possibly more feel it could be couched in language a little more conditional than absolute.

Mr McNaught: I was simply explaining why I wrote it the way I did.

Mr Mills: I'd like to comment about the ability to regulate the flow of ammunition from the other provinces. I think it's fair to say that both professors felt

strongly that the province would not be able to regulate the flow of ammunition from other provinces. Reading this report, I would like to see that put a little bit stronger, that we cannot, in our opinion, regulate this flow from the other provinces. It says "less likely." Just couch that in stronger terms, that position taken by those professors.

The Chair: Are we on page 4, referring to paragraph 2?

Mr Mills: Yes, I'm down to "a provincial law purporting to regulate the importation of ammunition from another province or country would be less likely to withstand a constitutional challenge." The professors said, and they said it very strongly, that the province would not be able to regulate the flow of ammunition, so we're saying their position should be couched in stronger terms.

The Chair: We'll get some comment from the others in a second. Is there a sense of agreement about the cautionary remarks people were making earlier on, including the language Mr Harnick was proposing, the "in all likelihood" language? Was that all right?

Mr Winninger: Just some reference to the caveats or cautions. We're not throwing the whole thing into doubt.

The Chair: That's fine. Now Mr Mills raises another point about the language. He wants to make it stronger.

Mr Mills: Stronger. The professor said this is going to be tough, and I'm saying that should be pronounced.

Mr Chiarelli: As a suggestion to the researcher in drafting, perhaps we cannot touch anything in that area till we get to the final paragraph, where it says, "Based on the legal advice outlined above, it is the view of the committee that the province has jurisdiction to enact legislation regulating the purchase and sale of ammunition within the province," and then we could add "but that the legislation would be subject to the usual type of constitutional challenges." In any criminal law that's enacted, you have constitutional challenges, charter arguments etc. Again, I think what Professor Swinton was saying is that you can expect to have that type of normal constitutional challenge.

The Chair: Mr Chiarelli's saying that based on the final paragraph, he wouldn't recommend changes to the second paragraph. Other comments on that?

Mr Winninger: What paragraph are we on now, the second paragraph?

The Chair: Mr Mills was saying that the language in the second paragraph on page 4 should be stronger, that what is there isn't strong enough. Mr Chiarelli was saying we should leave the second paragraph, and the third paragraph takes care of it.

Mr Chiarelli: Just leave everything as it is, but where it says, "Based on the legal advice outlined above, it is the view of the committee that the province has jurisdiction to enact legislation regulating the purchase and sale of ammunition within the province," just add the phrase "although the normal type of constitutional challenges could be expected."

Mr Winninger: My only point as to which paragraph we were on is that Mr Mills's concern was about paragraph 8, but the last part of paragraph 9 actually makes

the point Mr Mills was making, that, "A strong argument could be made that such a law fell within the federal government's power." Isn't it already there, is what I'm saying.

Mr Chiarelli: It's very important to understand what the nature of this caution is on the page 4, the second paragraph. What Professor Swinton and Professor Hogg are saying is that if Bill 151, or any other law the province drafts, mentions the importation of ammunition, you're basically going to make it much more subject to a challenge. All we have to do to make it less subject to a challenge is say we're controlling the purchase and sale within the province, and then it's not going to be subject to a strong challenge. If we try to say that nobody in Ontario can import ammunition, we're going to be caught and it's going to be ruled out of order constitutionally, so we have to be very specific and deal with the purchase and sale of ammunition within the province.

Ms Akande: I have a question. In that very paragraph it says, "Based on the legal advice outlined above, it is the view of the committee..." and yet we have all been very careful at the initiation of this exercise to say that this is going forth not necessarily as the agreed-upon view of the committee that the province has jurisdiction to enact legislation. We're still discussing that. That's what this whole thing is about. This implies more agreement and assent.

Mr Chiarelli: We're trying to bring the discussion to an end by agreeing, what is the committee's view on the constitutionality? That's what we're discussing.

Ms Akande: But as it's stated here, it doesn't seem that's part of a discussion. It really does imply that we have reached that agreement.

Mr Chiarelli: We're trying to reach the agreement.

Ms Akande: I knew that.

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Mr Harnick: I think you're really making a lot of nothing. On page 3, "Both Professor Swinton and Professor Hogg concluded that a provincial law, such as Bill 151, aimed at the control of the purchase and sale of ammunition within the province would be constitutionally valid." Then the next full paragraph is that these professors "also suggested that a provincial law purporting to regulate the importation of ammunition from another province or country would be less likely to withstand a constitutional challenge." Then the final paragraph says, "Based on the legal advice outlined above, it is the view of the committee that the province has jurisdiction to enact legislation regulating the purchase and sale of ammunition"—the key words being—"within the province."

All I'm saying, and I thought we had this agreed to, is that we were going to add, at Mr Winninger's request, the aspect of Professor Swinton where it seemed there could be an argument to be mounted against this, and we would then say, "Based on the legal advice outlined above, it is the view of the committee that in all likelihood the province does have jurisdiction to enact."

The whole essence of what we're saying here is that you can't be absolutely certain and that we shouldn't be

conveying to people who read this absolute certainty in terms of the constitutional position. You might have some student come over from some high school or university to do a research paper on this and go back to school and say, "Those people in that committee said this was an absolute certainty, and if you can't believe your legislators, who can you believe?" I don't think we want to convey that impression.

Mr Winner: I'd feel more comfortable if we changed that second line of the paragraph we're looking at now to read that the province "may have" jurisdiction to enact legislation. Mr Harnick's words were "in all likelihood." Mr Chiarelli's words were "does have jurisdiction." I like "may have."

Mr Harnick: I don't have a problem.

Mr Winner: We are expressing a view. My preference would be to say "may have jurisdiction." That's not to say we don't. That's not to say that all doubt has been removed that we do. It's simply to say we "may have" jurisdiction, that there may be a basis.

Mr Chiarelli: That makes it too wishy-washy and it doesn't reflect the advice we got. It was very clear that they said, reading between the lines, "in all likelihood," and I would prefer to accept those words. "May" is really watered down, that it could just be an outside possibility. In fact, the weight of their evidence is that it's "in all likelihood" constitutional, not "may," I think a proper reading of their advice to this committee.

Mr Winner: Did they use the words "in all likelihood"?

The Chair: As a neutral Chair, we had two constitutional lawyers who said this, and would we not as a committee, based on the legal advice, therefore say that "the province has jurisdiction," which is what they said?

Mr Winner: Could I ask Andrew to remind us of the words they used in their bottom line?

Mr McNaught: I quote Professor Hogg: "I directed my attention to the question of whether the Act to control the Purchase and Sale of Ammunition would be a valid provincial enactment, and I have no serious doubt that it would be. It seems to me that the province does have the power to control the sale and purchase of a dangerous product like ammunition."

Mr Winner: Did Katherine Swinton use similar language?

Mr McNaught: She didn't use that definite language.

Mr Chiarelli: "No serious doubt."

Mr McNaught: He has no serious doubt, is the essence of his opinion.

The Chair: "I have no serious doubt that it would be," he says.

Mr Harnick: Why don't you put "in all likelihood"? Then at least it's not absolute.

Mr Winner: Gord, are you okay with "in all likelihood"?

Mr Mills: I'm a reasonable person.

Mr Harnick: That's what we always say about you.

The Chair: Okay, "in all likelihood." Very good.

Mr Mills: Where are we going now? Are we moving right along?

The Chair: I think we can. Is that all right?

Mr Mills: I want to comment on page 5 when we get to that.

The Chair: Let's just see whether there's anything else on page 4. The other one would read, as had been recommended by Mr Harnick, "Based on the legal advice outlined above, it is the view of the committee that in all likelihood the province has...." Anything else there?

Mr Winner: Do we need to deal with Bill 151 in here in such an extensive fashion and list all the amendments? Is this something we need to do in this report?

Mr Chiarelli: Can I make a suggestion here? I would suggest leaving the reference to Bill 151 in so that it would read, "Bill 151 would restrict the sale of ammunition to persons holding" etc. "Under the bill, it would be an offence to purchase or sell ammunition if these conditions were not met."

I would say in the next sentence, "Set out below is a summary of the recommendations received by the committee to amend Bill 151, and for ammunition control legislation generally," and I would like to see some additional reference there which would indicate the committee's recommendation that these should also be considered in any other provincial bill which might be introduced by the government to deal with it. It's a reality that if my private member's bill isn't dealt with, it may be that the government will bring in a bill, and I want a statement in here that says the advice we received from the witnesses should be applicable to Bill 151 or any other provincial bill which might be introduced.

Mr Winner: Except that they didn't have any other provincial bill before them.

Mr Chiarelli: I agree, but the general principles of their advice. There were some general principles; for example, photographs on cards and exemptions for hunters or farmers etc. Those are all recommendations that were made that should be taken into account by a draftsman of a provincial bill. I would like to see us create some wording that could incorporate them to the extent that they might be applicable to a government or other bill provincially. I want it to be more general advice than just to Bill 151.

The Chair: So Mr Chiarelli's saying leave it and add.

Mr Harnick: It seems to me that you can get around all of this by just saying, "An ammunition control bill would restrict the sale of ammunition" etc, and then, "Set out below is a summary of the recommendations received by the committee for inclusion in an ammunition control bill." Then you just set it out. That basically recites what's in Mr Chiarelli's bill without specifically mentioning Bill 151, so if the government decides it would like to legislate, these would be all the components we would expect to see in a bill. You don't have to deal with Bill 151; you can just say this is what should be in it.

Mr Chiarelli: I would like to make a reference to Bill 151, but a qualified reference, in that earlier we had indicated that: "the attention of a number of witnesses was addressed towards Bill 151. Notwithstanding that, a

number of recommendations should be considered with respect to any provincial legislation dealing with this issue." If we don't make a reference to Bill 151, in effect some of the comments of the witnesses would be taken out of context. I would like to put in some contextual reference to 151 but then try to generalize it more towards provincial legislation generally. I don't know if that makes sense to anybody, but I think it would put it in context a bit.

I don't care whether my name is associated with it. I don't particularly care whether Bill 151 is referenced in the report, other than I think it would be a more honest representation of what the witnesses were saying to have a reference to Bill 151 in some way, because that's what they were commenting on in large part.

Mr Harnick: Then why don't you just say, "Using Bill 151 as a guideline"—

Mr Winninger: Or "as an example."

Mr Chiarelli: Exactly. That's in fact what happened with the witnesses.

Mr Harnick: Or, "Using Bill 151 as a reference point, witnesses said that an ammunition bill should include restriction for the sale of ammunition to persons holding a valid Ontario Outdoors Card" etc, and then go on: It should include a definition of "ammunition," and then just go through each of the items. Is that a satisfactory way to deal with the next draft?

Mr Chiarelli: It is to me.

1750

Mr Mills: Are we going to move on now?

The Chair: They're proposing some suggestions of how to deal with reference to Bill 151, and I'm just getting a sense to see whether you agree.

Mr Winninger: I do agree, and I can see from reading through these various recommendations that you can't deal with them in a vacuum. Since Bill 151 was the reference point, to use Mr Harnick's words, to focus their attention on these issues, we need to, but I don't see the need to change a lot of what's here from page 4 to page 10, just that perhaps we don't need to keep referring to Bill 151 once we've said it's the reference point at the beginning, unless you absolutely have to.

The Chair: Okay, that takes care of it, at least on page 4. Page 5?

Mr Mills: We're talking about the ammunition permits, and I just want to talk to Bob about this briefly. We had a lot of objections from the Ontario Handgun Association and the Ontario Federation of Anglers and Hunters, but in addition to that, our ministry has been inundated with complaints and calls from people engaged in agriculture and the like—they don't belong to any of these organizations—about how they deal with the vermin and other animals, predators, that come on their property that they need to dispose of. This is a real serious concern to those folks. I'm just wondering how you feel about that.

Mr Chiarelli: My position is that Bill 151 was approved in principle and that if the justice committee gets to deal with Bill 151 or a similar type of bill, all

those concerns should be addressed and hopefully we will consider amendments. I'm sympathetic to accommodating the concerns of the anglers and hunters about the expense of the certificates mentioned in Bill 151, about the concerns of farmers, and I would like to see some accommodation so that the regulations or sections of the bill would address their concerns. I am more than willing to look at reasonable amendments to accommodate those concerns.

Mr Mills: That's good.

The Chair: Further discussion? Is there agreement? Are there any changes being proposed here?

Mr Mills: I just wonder if we should include some of your feelings, Bob, in this report, so that it's in there that we say we would visit these areas of concerns of the anglers and hunters, of the farmers etc. Rather than say, "Yes, we will," should it be mentioned in the report?

Mr Chiarelli: I'm happy to have the mention, but given the nature of the process, I'm not sure it's appropriate. If you want me to give witness as the person who introduced the bill, I will say on the record as the person who introduced the bill that I would be supportive of having some indication in the report that the committee, when and if it deals with Bill 151, take into account in a serious way all the amendments which have been proposed by people who came before the committee, take into account the concerns of the Ontario Federation of Agriculture; and that we take as a starting point simply the principle that the province should, within the province of Ontario, pass legislation to regulate the purchase and sale of ammunition, with particular reference to enforcement of age restrictions. That's basically the reference point or the starting point from my perspective.

The Chair: Mr Mills, is that what you would like referenced in the report?

Mr Mills: It's a little more than I wanted, but we'll go along with that.

The Chair: Some summary of that statement?

Mr Mills: Yes, some summary of that.

The Chair: All right, page 6.

Mr Mills: I have a comment to make, down at the bottom where it says "ammunition registry." We had the chief provincial firearms officer appear, and he says a number of things. In the report it says: "As the office of the CPFO does not have enough staff," and I would like to mention that he would need additional staff. Maybe it's just your interpretation of the way the language flows, but I would like to see that he said he said he needs additional staff, rather than to say he hasn't enough staff.

The Chair: The witness may have said this. Is that correct, Mr McNaught? Do we know?

Mr McNaught: I don't remember the exact wording, I'm afraid.

The Chair: Do you want us to check the record to see what he said?

Mr Mills: If he did say he requires additional staff, that's fine. But I think that's a little different from saying, "I haven't got enough staff to do this." My argument is that you can always do with more people to do anything,

but when you haven't got enough you can't do anything. It's, "We need more and we'd like to have more to do this," as opposed to saying, "We haven't got enough, so we can't do it."

Mr Chiarelli: I think we're splitting hairs, in a sense. I don't think the province has enough staff to conduct inspections in any area, whether it's elevators or so on and so forth. I have raised the question of elevator inspections off and on.

I think what he's saying is that he may have to set up a system of random inspections or he may have a system of inspecting in areas where complaints come in, but that there will have to be a policy of inspection that will not be 100% inspection. With a lawyer's trust account, for example, the law society will go in and do periodic audits of a lawyer's trust account. If there's going to be a registry kept, if that's in the legislation, I'm saying there will be periodic audits of the registries of vendors of ammunition.

Nobody is suggesting in the legislation that the officer is going to have to inspect on an annual basis every single one who sells ammunition in the province. I don't think that is being suggested at all, and I don't think it's appropriate to expect everyone to be inspected. You may require reports to be filed. They may be inspected or audited on some sort of scientific basis, but not all of them.

Mr Mills: I would like us to check the Hansard. It's my belief that the gentleman did say, "I would require additional staff." He didn't say, "I don't think I have enough staff." That's the point I want to make and I don't want to leave that out.

The Chiarelli: Maybe we could change the wording to indicate that "The CPFO indicated that resources for inspections is a problem that would have to be addressed."

Mr Mills: No. I'm not going to say it's a problem.

The Chiarelli: "Is an area that would have to be addressed."

Mr Mills: "The CPFO said he may require additional

staff to conduct the inspections of all ammunition retailers in the province."

The Chair: Andrew, will you check that? Anything else on that page?

Mr Mills: I think it's 6 o'clock.

The Chair: Given that it is 6 o'clock, we still have a number of things. We have tomorrow to finish this report. I'm assuming we'll have plenty of time, if we start on time, to go through these things. If not, we'll have to discuss how to deal with that. I'm not sure whether we want to do that now or do that tomorrow.

Mr Chiarelli: I just wanted to leave a thought with the committee members, and it's the same thought I mentioned at the start of our deliberations today. We're very close to coming to possible recommendation number 1 and possible recommendation number 2. I see nothing inconsistent with us merging those two recommendations and indicating a provincial preference for the federal government to get involved in a meaningful way, but that we're going to proceed with legislation in the absence of the federal government; that hopefully the province, by showing this leadership, will show leadership to the other provinces and the federal government to do it in a much more meaningful way, but that this is a small area where the province can get involved and show leadership in the vacuum type of situation.

That's the area I suggest I will be going into tomorrow. Maybe Charles and David and the other members can consider that alternative between now and tomorrow.

The Chair: I'm assuming we'll have plenty of time to deal with this report tomorrow. If within an hour of beginning we get a sense that we're having some difficulties, we'll discuss how to proceed, okay?

Mr Harnick: Have we gotten to the point of having a subcommittee meeting, in that we've now received a bill from the Legislature that we will be dealing with in this committee, in priority to the matters that were decided at the last subcommittee meeting?

The Chair: I'll arrange for that, Mr Harnick. This committee is adjourned until tomorrow.

The committee adjourned at 1802.

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Substitutions present/ Membres remplaçants présents:

Huget, Bob (Sarnia ND) for Ms Harrington

Mills, Gordon (Durham East/-Est ND) for Mr Bisson

Owens, Stephen (Scarborough Centre ND) for Ms Harrington

Also taking part / Autres participants et participantes:

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Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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Mercredi 22 juin 1994

**Standing committee on
administration of justice**

Subcommittee report

Draft report
Control of ammunition
and community-based
crime prevention initiatives

Chair: Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Wednesday 22 June 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mercredi 22 juin 1994

The committee met at 1732 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Rosario Marchese): Before we get on to our regular business, can we have the subcommittee report by Ms Harrington?

Ms Margaret H. Harrington (Niagara Falls): Earlier today we held a subcommittee meeting and the three parties agreed to committee hearings on Bill 163, the planning reform act. The dates of travel for the committee would be August 29 through to September 15. That would be three weeks of travelling, one week to the north, one to the west and one to the east, followed by a break of one week, at which time, as this is a major bill, each party would be able to get its research and amendments done, and then clause-by-clause during the week of September 26 through 29. This committee will advertise the hearings across the province, and normally we will have half-hour slots for each of the presenters.

That's a rough outline of what has been agreed upon, further details to be done by the clerk and the subcommittee.

The Chair: So Ms Harrington moves that. All in favour of the subcommittee report? That carries.

Mr David Winninger (London South): I have an ancillary motion, that for the purpose of committee business over the summer recess, the Chair, in consultation with the subcommittee, and in the case of private members' bills in consultation with the sponsor of the bill, shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee.

The Chair: I suspect for the most part we will be dealing with the bill for the four weeks we will have, starting in August some time; that so much of our time will be taken by that, we may not even get to this. However, any discussion? Seeing none, all in favour of the motion? Opposed? That carries.

Mr Robert W. Runciman (Leeds-Grenville): Dealing with the committee travel, just an inquiry: How much has the committee budgeted for advertising for its public hearings process?

The Chair: We have not used much money so far for much of our committee work, so we have plenty. But you want to know specifically how much that might cost, to do all this travelling?

Mr Runciman: I was at the resources development committee this afternoon. They're doing the workers' compensation bill, and they were indicating that they're going to advertise in every daily newspaper across

Ontario. Is that the intent of this committee as well, to advertise its hearings in every daily newspaper?

Clerk of the Committee (Ms Donna Bryce): Just to clarify the committee budget, the process has changed since previous years. Right now there's a global committee budget for all committees, and we'll draw on that budget for the travel as necessary.

For advertisement, we use a consulting firm that sets up the advertisements in the appropriate communities, the ones which will be affected. I would say that the average cost of ads may be in the order of \$20,000.

Mr Runciman: I just wanted to make this point; I made it at the previous committee. I don't sit on these committees, but something that the Chairs of the committees perhaps should be looking at in terms of a recommendation to the Board of Internal Economy is that we have four committees going out this summer, all of them advertising; why couldn't they all advertise in one ad and perhaps significantly reduce the advertising costs?

I'm a little cheesed off. I had the Ministry of Transportation close a vehicle licensing office in a rural community in my riding for a supposed saving of \$10,000, yet I see this kind of expenditure occurring and there's obviously an opportunity here for real savings.

The Chair: I understand the point you raised and we'll follow up on that. Was there agreement in the subcommittee to do this by all three members of the different parties?

Ms Harrington: There was agreement to advertise. We did not discuss whether it would be weekly papers or major papers or any of those details.

The Chair: Perhaps we can discuss that again. We'll undertake to do that.

DRAFT REPORT

CONTROL OF AMMUNITION
AND COMMUNITY-BASED
CRIME PREVENTION INITIATIVES

The Chair: Ready to begin on the draft report? Anything on page 7, or did we finish that off?

Mr Robert Chiarelli (Ottawa West): I thought we had agreed on the text up to the recommendations.

Mr Gordon Mills (Durham East): I have a minor thing on page 8. It's the same wording I had difficulty with yesterday, that "the CPFO does not have sufficient staff." I think we were going to look into that to say he "would require additional staff," just that difference. I don't know if it was researched to find out exactly what he said yet.

The Chair: We have it and we'll read it out.

Mr Andrew McNaught: This is Mr Vanwyk speaking. "At the present time my office does not have the staff to inspect ammunition dealers alone; we only have time to deal with the firearms and ammunition dealers."

The Chair: He said "does not have the staff." Mr Mills, do you want to take out the word "sufficient" to say "the"?

Mr Mills: Yes.

Mr Runciman: Could I have some clarification about what we're dealing with? "Does not have sufficient staff," and Mr Mills is suggesting what?

Mr Mills: "Does not have the staff."

The Chair: The Hansard we were reading from the individual who gave testimony said, "the office of the CPFO does not have the staff," as opposed to "sufficient." Mr Mills is agreeing to delete "sufficient" and put in "the."

Mr Runciman: Why should we delete that?

The Chair: We were trying to put it in the language of the testimony given, I guess.

Mr Runciman: If you want to put in the testimony delivered, he doesn't even have enough staff to do the job he's currently authorized to do in respect of firearms dealers. There are 1,200 dealers in this province and he has 10 staff to try to tour the province and they're supposed to do annual inspections, and they don't even come close to touching on visiting each of those 1,200 dealers. That was the testimony we heard. If you want to be accurate, perhaps we should even touch on that.

1740

The Chair: Any further discussion on that page?

Mr Runciman: I'm happy with it the way it is.

Mr Mills: I don't want to turn what I perceive to be a minor discrepancy into a major issue, because we've only got 20 minutes to be here.

The Chair: So we'll leave it?

Mr Mills: Leave it if it's a problem. Forget it.

The Chair: Very well. Anything further on that page?

Mr Chiarelli: I have a motion to make.

The Chair: We're on page 9, moving into possible recommendations. You want to move something on the whole report?

Mr Chiarelli: Yes. I move that the committee adopt the draft report:

(a) incorporating the changes made on June 21 as agreed to by all parties;

(b) that possible recommendation 1 be deleted;

(c) that recommendation 2 be adopted by changing the second recommendation to read "that the requirement of a photo identification would be preferable to a requirement that purchasers of ammunition show a valid Outdoors Card with the appropriate hunting licence or a valid firearms acquisition certificate";

(d) that the provisions of the report dealing with community-based crime prevention initiatives are acknowledged and received.

It is my understanding that the Solicitor General has a draft government bill he is prepared to introduce tomorrow incorporating the recommendations of this report as suggested in my motion. It is my understanding that the substance of the bill is that there be an age requirement of 18, that there be a requirement for a photo identification rather than the Ontario Outdoors Card or a firearms acquisition certification which was in Bill 151, and that there will be maintained a registry by all vendors or dealers in ammunition, the latter being added to the concept of Bill 151 on the strong recommendations of law enforcement officials and police witnesses who came before the committee.

It is my understanding that the Solicitor General intends to initiate changes to regulations which would make these changes effective as early as a month from now and that the actual bill itself is necessary to impose offences and penalties. It is my understanding that the Solicitor General is attempting to receive unanimous consent for tomorrow so that his bill would be given first, second and third reading.

I would say for the record that I personally and my caucus support the government's initiatives and will give unanimous consent tomorrow. I cannot speak on behalf of the Conservative Party.

Mr Runciman: No kidding.

Mr Mills: It's been plain from the outset of these discussions that, although I sought some changes in words to recognize some of the things the government has been doing, the weapons registry, the amnesty program, I recognize that we're not here to make political points out of this, that we're here to serve the people of Ontario in a very delicate and a timely manner with this problem.

I'd like to take this opportunity, and it may be the first time in his life, to thank Mr Chiarelli for his contribution to this committee and his introduction of these amendments, which our government will support. Thank you very much.

The Chair: You're supporting the amendments, in other words?

Mr Mills: Yes.

Ms Harrington: Briefly, I agree with the direction Mr Chiarelli has indicated in this motion. The only request to the committee I have is a fairly minor one. On page 14, where it discusses the initiatives for community-based crime prevention, I would like to add another bullet point, and I will leave the wording with the clerk. It reads as follows:

"Planning Together process—That the Ontario Housing Corp initiatives to empower tenants through the Planning Together process be encouraged to continue. This process strengthens individuals' respect for their communities through involvement in decision-making and addresses community safety and security issues, as well as discrimination and harassment issues in Ontario Housing Corp."

Unfortunately, I do have to leave to go chair in the Legislature, so I'd leave this wording with you and ask you to consider that.

The Chair: If there's agreement, there won't be any

problem. Is there agreement with that? Very well.

Mr Chris Hodgson (Victoria-Haliburton): I want to thank you for letting me sit in as a guest. Mr Chiarelli referred to tomorrow's legislation that's coming up. When will that be in a final form that we can have a look at? Does anybody know?

Mr Chiarelli: Just after the vote in the House, I spoke with the Solicitor General. He indicated to me that he understands fully that some parties may be reluctant to give 100% concurrence with the legislation until they see it. He undertook to have the draft legislation to us some time this evening and said he would be available to discuss it this evening with anybody who wants to talk to him. So presumably within the next couple of hours we'll have the details of the legislation.

Mr Hodgson: Mr Chiarelli, if it's similar in content to this private member's bill, can you give me a practical example of how it will work? For instance, if a person owns a farm and has a .22 or a shotgun, but they no longer need an FAC to buy another weapon so they don't have a current FAC, will they be able to go in and buy shells for their shotguns?

Mr Chiarelli: If they have a driver's licence with a photograph on it—they're obviously 18 years of age—they can go in and purchase the ammunition over the counter. The vendor of the ammunition will be required to record in a designated registry the name and address of the particular individual. That registry requirement is in the legislation at the request of police enforcement officers, because they thought it would be extremely helpful in investigations of crimes involving guns. Where they have the bullet, they will forensically be able to trace the point of sale if it was purchased legally.

Mr Hodgson: Thank you very much. I can't vote, but I appreciate that.

Mr Winninger: I think we need to be a little clearer. In terms of the phrase Mr Chiarelli used, "designated registry," he knows and I know that we're talking about the dealer of ammunition keeping records of whom the dealer sells to, presumably on what day and so on. There's not going to be some central registry where all these dealings are going to be recorded. We need to clarify that. "Designated registry" suggests something far more elaborate and formal than what's going to be the actual fact.

The other thing is just clarification, and perhaps it goes without saying: All of our discussions yesterday around changes that we'd like to see in this draft report will be incorporated. Your motion deals strictly with the recommendations today.

Mr Chiarelli: That's correct. My motion basically says, adopt the draft report incorporating the changes made yesterday, deleting recommendation option 1 and accepting recommendation 2, with that change I've indicated, and item (d) is basically acknowledging and receiving the balance of the report after the recommendations, which deal with community-based crime prevention initiatives. The motion is intended to adopt a complete report, with those changes.

Mr Runciman: Can I get some clarification? In (c) you're saying "That recommendation 2 be adopted by changing the second recommendation to read..." What's the effect of this change, that you're removing the references to FAC?

Mr Chiarelli: Yes. Bill 151 is not technically before the committee on this particular motion. What we're recommending to the government is that the requirement of a photo identification is preferable to a requirement that purchasers of ammunition show a valid Ontario Outdoors Card with the appropriate hunting licence or a valid firearms acquisition certificate. It is my understanding that the draft legislation makes no reference to the Ontario Outdoors Card or the FAC and it is not a requirement; it's simply a requirement to have the photo ID. I believe that is in response to the association of hunters and anglers and in response to submissions made by the Ontario Federation of Agriculture and farm groups.

Mr Mills: Are we going to get the opportunity to see the report in its entirety before we sign off on this? I suppose there's an opportunity. When will the report be ready? When will we dispose of it?

The Chair: Most of the changes could be done or have been done. It could be ready for tomorrow for us to see before it gets presented in the House.

Mr Mills: I don't see any conflict in seeing the report before the minister introduces the legislation. Speaking for myself, I think the committee would like to see it before we actually sign it off. I don't see that as a holdup to the introduction of the bill.

The Chair: As individual members to see the report? We can arrange to do that before tomorrow.

Mr Chiarelli: Just on a technical point, if I may change the motion to "(a) incorporating the changes made on June 21 and June 22," to incorporate the minor addition that was just made, that will cover that.

The Chair: By Ms Harrington. Very well. Any further questions or points? Seeing none, all in favour of Mr Chiarelli's motion? Opposed? That carries.

If there is nothing further, I will go through the other matters with respect to this draft. Mr Chiarelli's motion already moved that the draft report be adopted, so that's the first part of this.

The second is: Shall I present the report to the House and move its adoption? Agreed.

Mr Winninger: Subject to circulating a copy of the final draft.

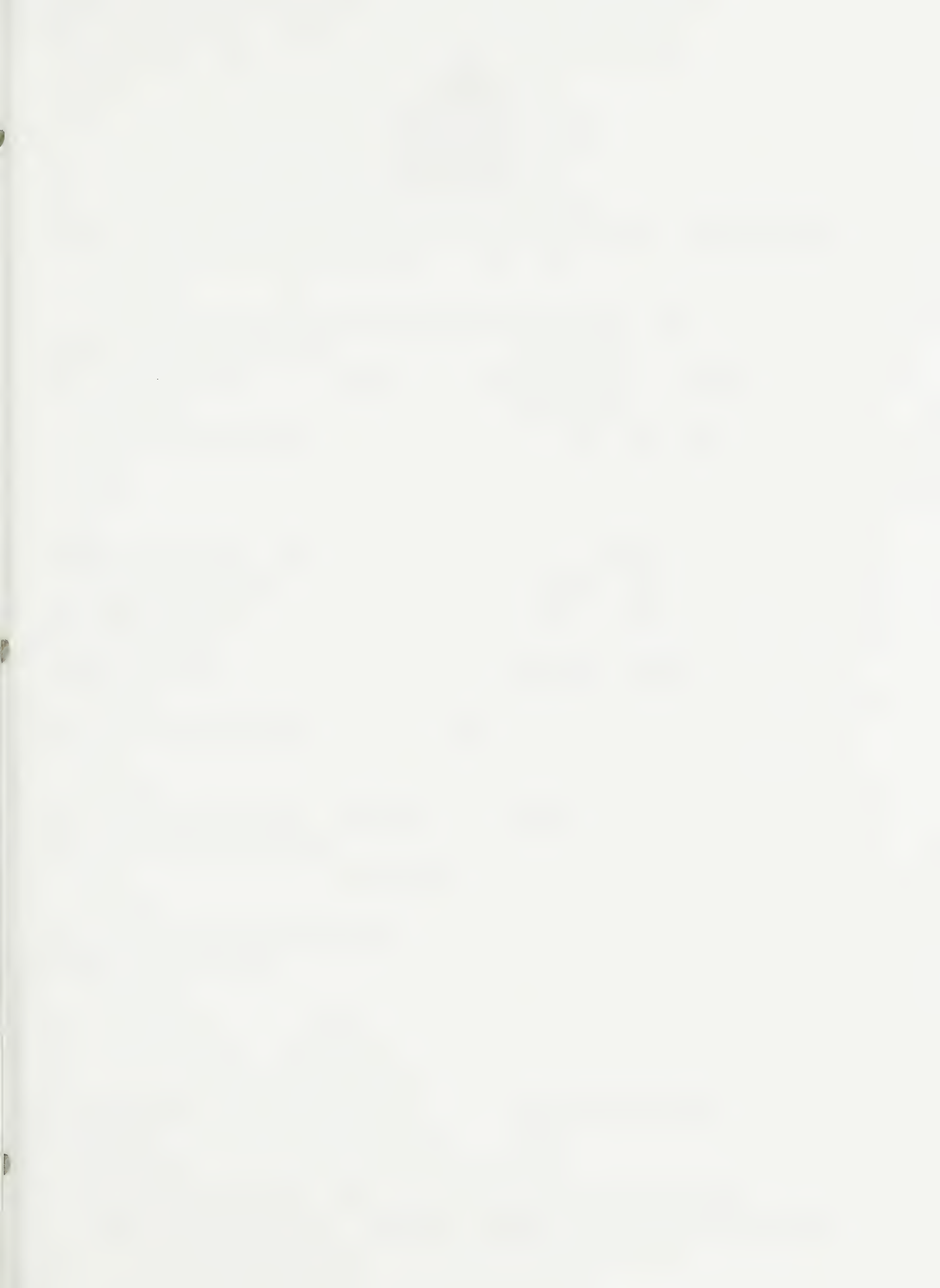
The Chair: Sure. We should be able to do that before 12 o'clock tomorrow.

Is there agreement that the French translation be tabled at a later date? Agreed.

Shall the committee request the government to table a comprehensive response to the report within 120 calendar days of it being reported to the House? Agreed.

Thank you very much. This committee is adjourned.

The committee adjourned at 1755.



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**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Runciman, Robert W. (Leeds-Grenville PC) Mr Harnick

Also taking part / Autres participants et participantes:

Mills, Gordon, parliamentary assistant to Solicitor General

Clerk / Greffière: Bryce, Donna

Staff / Personnel: McNaught, Andrew, research officer, Legislative Research Service

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**Legislative Assembly
of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 29 August 1994

**Journal
des débats
(Hansard)**

Lundi 29 août 1994

**Standing committee on
administration of justice**

Planning and Municipal Statute Law
Amendment Act, 1994

**Comité permanent de
l'administration de la justice**

Loi de 1994 modifiant des lois
en ce qui concerne l'aménagement
du territoire et des municipalités

Chair: Rosario Marchese
Clerk: Donna Bryce

Président : Rosario Marchese
Greffière : Donna Bryce

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Monday 29 August 1994

Lundi 29 août 1994

*The committee met at 1009 in room 151.*PLANNING AND MUNICIPAL STATUTE LAW
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS
EN CE QUI CONCERNE
L'AMÉNAGEMENT DU TERRITOIRE
ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

The Chair (Mr Rosario Marchese): I welcome everyone, committee members and other guests.

We are beginning the public hearings on Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters.

MINISTRY OF MUNICIPAL AFFAIRS

The Chair: Welcome, Minister Philip, to these hearings. You might introduce the others before we begin.

Hon Ed Philip (Minister of Municipal Affairs): On my immediate right and your left, Mr Chairman, is Dana Richardson, who has worked very closely in the development of this legislation, and of course she's with my ministry. On my left is my policy adviser, Bill Freeman, and on my far left is Deputy Minister Stien Lal. I have some other staff that are behind me, and from time to time, if you have some very specific technical questions, legal questions, whatever, they'd be happy to assist.

The Chair: Wonderful. For the information of all here, we'll begin these hearings with Minister Philip after which there will be questions, I presume. Following that we'll be hearing from Mr Sewell and Mr Penfold. We'll get the statements from the various parties at the end of all of that. Mr Philip, please begin any time you're ready.

Hon Mr Philip: Thank you, Mr Chairman, and members of committee. It's a pleasure for me to be here with you. As many of you know from reading the newspapers or indeed from my being with you in your own ridings this summer, I've been very busy with my federal colleagues and particularly with Art Eggleton, as

we go around the province together, and we will be continuing to do that over the next three weeks.

However, I am with you for part of this morning and I look forward to the dialogue with you over the next three weeks. My very capable parliamentary assistant, Pat Hayes, is here and he will be with the committee during the full three weeks and will be reporting, of course, to me on a very direct basis, as will be my staff who will be monitoring the various deputations and considering the recommendations that they are making.

I appreciate the opportunity to kick off these public hearings on Bill 163, our legislation to reform land use planning in Ontario. You will become intimately acquainted with Bill 163 over the next three weeks as you hold your hearings across the province. You have a busy schedule ahead of you with a very tight time frame and hearings in 11 different locations, and I wish you much success.

I believe and many people in this province whom I've talked to believe that Bill 163 is good legislation. It has had relatively smooth passage up to this point. Now it's time to give the people of Ontario a chance to voice their opinions, and I'll be most interested in the hearings and what they have to say.

You will recall that we appointed the Commission on Planning and Development Reform in Ontario in July 1991. It was chaired by John Sewell, former mayor of Ontario and a well-known figure in municipal affairs. The two other members were George Penfold, a professor of rural planning, and Toby Vigod, an environmental lawyer who is now assistant deputy minister of the Environment in British Columbia. You will have an opportunity to hear from both John Sewell and George Penfold later this morning.

Let me review for you some of the background of the appointment of the royal commission which set the stage for this legislation.

When our government took office in 1990, the planning system in Ontario was in crisis. There had been a number of scandals that shook the confidence of the public. The approval process was long and complicated with delays built into the system. In many parts of Ontario, people felt that they had no meaningful input into the process.

The government decided that it was a priority to reform the planning system in a substantive way and appointed the commission on planning reform with a mandate to review the system and restore public confidence.

The commission set out its work in two phases. Phase 1 was developing a draft set of planning goals. Phase 2 was looking at the overall planning process with a view specifically to the environment and other important issues such as heritage, energy and the economy.

The first task the commission undertook was to set up a number of volunteer working groups to help develop draft planning goals and policies. Members of these groups represented the full spectrum of Ontario society.

Next the commission held a series of forums across the province to get more public input on planning issues. Using all the public comment it had collected, the commission then drafted its first report in December 1992. This report was then circulated widely for review and comment.

After the release of the draft report, the commission held more public meetings with stakeholder groups to discuss it. Another 2,000 written submissions were received on the draft recommendations, and at the conclusion of this impressive consultation the commission submitted its final report in June 1993. The report contained 98 recommendations.

I announced the government's response to the commission's work in December 1993 and sent out a proposed comprehensive set of provincial policy statements and other proposals for change for a 90-day consultation to about 27,000 individuals and groups. We received nearly 700 written responses and met with 60 stakeholders to discuss possible changes before introducing the planning reform package in the Legislature on May 18 this year. So you will see there was an enormous amount of public involvement in this process from the start to finish.

The commission members and the major stakeholders were involved throughout, and we relied on the commission's recommendations for guidance in preparing the legislation you have before you today.

As a final step, to keep the process moving, I appointed Dale Martin, the provincial facilitator, to head up an implementation task force. Those of you who know Dale Martin will know that he is a very talented person who has the ability to help people work together. He will tell you something of the work of this task force later in the day.

Some critics have said that our reform package is a watered-down version of the commission's report, that civil servants and politicians have ruined the integrity of the commission's work. I say to you that nothing could be further from the truth. Others of course, I might add, have said that the legislation goes far too far.

Bill 163 enshrines the Sewell commission's report. The structure of our proposed new planning system is contained in the final report of the commission. The recommendations have not been diluted. They have been captured in the legislation and in the policy statements.

I am pleased to say that 72 of the commission's 98 recommendations are being acted upon in the package of the proposed reforms. I think that this is quite a feat, and I challenge any member to come up with another commission whose recommendations have been met by a

government with such a percentage. In my experience of nearly 20 years sitting in the Ontario Legislature, I've never seen a royal commission enacted so quickly or so thoroughly by a provincial government.

I'll give you a few examples of how the thrust of the commission is reflected in our legislation. For instance, the commission told us that the approval process was long and cumbersome and that it needed to be expedited.

Earlier, as the Minister of Industry, Trade and Technology, I was very concerned and went to Dave Cooke expressing that same concern. People were telling me that if it takes five years to get the approvals to set up a plastics company here in this province, they'd move to Texas or set it up in the United States, and that was a major problem. Therefore, it was a concern to the government and particularly a concern to the Premier.

In response, we've introduced time frames into the legislation to streamline the process and to enhance public involvement.

The commission also told us to stop spending our time doing approvals and to delegate these responsibilities to the municipal level of government.

Bill 163 provides for transfer of responsibility for development approvals, and in many cases for official plan approval, to regional governments.

The commission also made it clear that planning in the province should be led by policy and that policy development was the proper role for the government. A comprehensive set of policy statements have been adopted by cabinet, based on the commission's recommendations. Section 3 of the Planning Act has been revised to require that decisions of planning authorities under the act shall be consistent with policy statements.

Without John Sewell's and his committee's vision and his persistence, we could not have achieved nearly as much. I thank him and the other commissioners today for the excellent work that they've done on behalf of the people of this province.

I want you to know that the work that you're about to undertake is terribly important. The proposed legislative changes that will now be discussed in public hearings across the province represent a fundamental reform to the current land use planning process, the first major reworking of the planning system in Ontario since the Second World War.

There were several factors that indicated an urgent need for reforms in land use planning in the province. Perhaps the most vital was the lost economic activity under the old bureaucrat and archaic system. The public, the development industry and Ontario municipalities had all told our province that the planning process, municipally and provincially, must be made faster and more efficient.

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The current system is cumbersome and complicated, and decisions on what development should take place and where it should go take far too long. The impact of delayed decisions amounts to millions of dollars of delayed, or even lost, economic activity and potential employment lost under the present archaic system.

Then there are the environmental costs. Development in many parts of the province was harmful to the environment. Activities including land clearing, drainage, dredging and filling continue to place pressure on wetlands and other natural features.

Planning decisions have sometimes failed to take into account the long-term servicing costs when there is urban sprawl, such as scattered rural development or expansion of urban boundaries.

Finally, there are social costs to be considered. Without clear policy direction and with many levels of decision-making, those most affected by land use decisions have become distanced from and concerned about the integrity of the planning system.

There have been demands for greater public involvement in developing local plans and access to decision-makers before development decisions are made. The public has demanded more openness and accountability of the local level of government.

These considerations led to the development of a legislative package structured around three main themes. The first is streamlining the land use planning and development system so that the decisions can be made more quickly; in other words, cutting out millions and millions of yards of red tape.

I mentioned an important example of this earlier in talking about the introduction of time frames for approvals into the Planning Act. This will require municipal and provincial planners to trim their approval process so that construction and jobs can get under way faster and easier.

For the first time there will be maximum time frames in which decisions must be made. If decisions are not made within these time frames, matters can be appealed to the Ontario Municipal Board.

By encouraging municipalities and approval authorities and the OMB to use mediation and alternative dispute resolution measures, costly adversarial and time-consuming hearings can be reduced.

These legislative changes support administrative reform which is already under way.

For the past two years, we've been testing various ways of screening applications so that they are circulated among different review agencies for comment in a more efficient way. We call this the one-window approach.

Already it has resulted in a drastic shift in the number of applications sent out for review. Under the current system, about 80% of the applications received by the Ministry of Municipal Affairs for official plan amendments were sent to many provincial ministries and public agencies. The goal of screening and targeting circulation is to reduce that to 20%; in other words, those that have a direct interest in the particular proposal.

The Ministry of Municipal Affairs has also begun to take on a stronger role as adviser and provider of information on planning matters. This approach makes it possible for critical issues and potential disputes to be addressed before the application is made. We're trying to move from being a policeman to being a facilitator and to being an adviser.

Another innovation has been the mediation of land use planning conflicts piloted recently by the Ontario Municipal Board. These projects have shown an 80% success rate and pave the way for alternative dispute resolution approaches at the local, regional and provincial government levels, as well as at the Ontario Municipal Board.

You will note that these all point to more emphasis on the early stages of planning, more public involvement and alternative dispute resolution procedures. You can see that we are already cutting red tape, converting planning and development from an adversarial process to a process of cooperation, be it between the province and municipalities or between upper tiers and lower tiers.

The second general theme of our package is giving more responsibilities to municipalities for the development process. Under the proposed legislation, municipalities will be assigned many powers for approvals of plans and development decisions that have been made provincially in the past. This recognizes the significant planning expertise already being exercised at the municipal level and reduces duplication of the approvals, and indeed, the development industry has constantly talked to me about that kind of duplication.

Our aim here is to get Queen's Park out of the development process. We believe that local decisions are better made by staff, politicians and the public in local communities. The government is taking a leadership role in establishing planning policies for the province, but we believe that these policies can best be interpreted by those who are directly affected by them, the people who live in the cities, towns and rural areas in Ontario.

With responsibility in planning delegated to local government, it's also essential that local accountability be strengthened. Therefore, our package includes reforms for open local government. They will ensure the new municipal planning powers are exercised in an open and accountable manner through legislative changes regarding open meetings, conflict of interest and disposal of property.

We do not want to make things difficult for anyone or to discourage potential candidates from running for office, but our goal is to enhance the confidence of local residents in the integrity of their local government, by making the operation of local government more open.

Finally, the underlying theme of the reform package is stronger protection of the environment. In addition to inefficiencies in Ontario's planning system, there is also fear that it simply does not have the teeth to protect the environment.

Our package of reforms promotes environmentally sound development through legislative amendments and a comprehensive set of policy statements that integrate environmental, economic and social values.

The policy statements protect water quality and quantity, preclude development in wetlands and in extremely sensitive, natural heritage features and permit a limited amount of development in other natural heritage areas.

Let me speak to you for a few moments about the philosophy behind the comprehensive set of policy statements.

Traditionally, the province's role in land use planning

has been limited to regulating municipal planning and to protecting provincial interests. It has performed this role by reviewing and approving most municipal planning proposals and private development applications across Ontario, often on a fragmented and very ad hoc basis.

As recommended by the commission, a central characteristic of the new system is that the province must clearly set out its policy interests and lead planning through policy rather than approvals, as I have mentioned.

In a policy-led planning system, everyone will know the rules up front. This will reduce a lot of the ad hoc decision-making that is going on under the present system and it will also result in faster and more consistent decisions.

The province will set out its policy directions through a new and comprehensive set of policy statements, through provincial plans and through area-specific policies.

A part of our reform package is the new Ontario Planning and Development Act that will provide for a more efficient and effective provincial planning tool. It will also shorten the process for creating and amending provincial plans, such as the parkway belt west plan.

The current process for amending such plans is extremely costly and lengthy. The shortened process will still allow ample opportunity for public input while protecting areas of provincial interest.

The legislative changes will require all decisions under the Planning Act to be consistent with the provincial policy statements rather than simply have regard to them. This will provide a stronger mechanism to implement policies, but it is not as restrictive as requiring conformity with the policy statements. Being consistent with provincial policy statements can be achieved through innovative implementation at the municipal level.

I released the policy statements in May together with Bill 163 as a key part of the planning reform package. The role of this parliamentary committee will be to examine the legislative package. However, you will have to examine the policy statements as well. The temptation will be there to make recommendations on the policy statements, but they have already been adopted by the provincial cabinet, even if they will not come into effect until the legislative amendments are proclaimed.

Having such a set of comprehensive, integrated policies will enable the province to step away from the traditional role in planning and development approvals, if you want, of second-guessing the local municipalities, and focus on policy development.

When I introduced the legislation, I was also pleased to announce that stakeholder groups had agreed to help us in working out the practical details of implementing our new land use planning system.

I mentioned earlier that the provincial facilitator was heading up a 15-member task force of municipal leaders. In addition to the municipal leaders, the task force consists of developers, builders and environmental groups to help ensure there's a smooth transition to the new planning system across the province.

We also felt the need for input from professionals in

the field and created a technical advisory committee composed of planners, engineers, architects, lawyers and environmental managers.

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The technical advisory committee will be providing advice to the ministry and to the task force on implementing planning reform. It will be working in tandem with the task force, looking at the same documents, to ensure as smooth a transition as possible.

Similarly, we identified a need for specific advice on rural planning issues. Growth pressures, protection of agricultural land and significant natural features affect the rural area from a variety of perspectives.

The Rural Table on Planning Reform is chaired by the Ministry of Agriculture, Food and Rural Affairs. It includes 17 representatives from agriculture, small business, anglers and hunters and county planners. The table will coordinate implementation advice with the task force.

Other working groups are examining in some detail the procedures for the new planning system as well as regulations and implementation guidelines for the comprehensive policy statements.

We are relying quite heavily on the expertise of those who will be affected by Bill 163 to tell us how to make the reform package work. We are very serious about getting the implementation right and we want to make this a workable and understandable process for everyone.

In conclusion, let me say that planning is a difficult area of public policy. Perhaps that's why no government has made any major changes for decades. It's complicated because there are strong competing interests in land use: builders and developers, environmentalists, community groups and municipalities. I suspect that what the committee will hear in the hearings are strongly differing points of view on individual issues. But the role of government, and now your role too, is to find a balance between those kind of opposing views and to find out where there are complementary views that can be achieved.

The reforms and changes to Ontario's planning system that I have outlined for you are long overdue. We believe that the fundamental principles of these reforms are sound and workable.

But we have said right from the beginning that we would like to hear from the public again. That is why we are working so closely with our stakeholder groups on implementation and it is why the public hearings you will be conducting are so important. We are interested in considering suggestions to improve legislation. In fact, we have some amendments of our own that we will be proposing.

We will be anxious to hear what the committee recommends after it concludes its public hearings. I can assure you that we will study your recommendations sincerely and consider them as long as, of course, they are consistent with the principles of the bill. Ladies and gentlemen, I look forward to your recommendations and I wish you well on your deliberations over the new three weeks.

Thank you for inviting me to start the deliberations on this very, very important bill, a bill that's important to the

economy, a bill that's important to environmentalists and to municipalities, and I think to each and every one of us in the province. I'll be happy to answer some questions or listen to some comments.

The Chair: Thank you, Minister. That's what we'll do. I'm assuming there are questions from the members, and we'll begin with the official opposition. Ten minutes per caucus.

Mr Bernard Grandmaître (Ottawa East): Can I split my time with my colleagues?

The Chair: Absolutely.

Mr Grandmaître: Very good.

I only have a few questions, Mr Minister. You say that you've implemented 72 of the 98 recommendations of the John Sewell report, and it seems very impressive: 72 seems very impressive. I find it very, very strange that in the last, I would say, four or five weeks I've spoken with a number of municipal leaders, UDI, the home builders' association in the province of Ontario, and they say that you've left out the most important recommendations of Mr Sewell. How can you answer this?

Hon Mr Philip: I'd simply say that those I've talked to have not expressed that point of view. They've felt that, by and large, the responsibility of any government is to take a commission's report, to deal with the main themes of that report if they agree with it and to implement as many of them as they see fit, based on the further consultation and advice that they are given.

I have met with numerous members of the stakeholder groups, I've listened to their advice and I've taken some of it. Some of the advice is conflicting. In this field there are conflicting interests. What we have tried to do is put in what we consider to be the best balance. Yes, some people will be disappointed.

Having served on committees over 19 years and worked in the Legislature, I've been part of numerous select committees in which I thought that everything that I and my committee had recommended should be implemented by the government.

Each of the governments that I've had to deal with, Liberal and Conservative, has said no, the responsibility of government is to take a balance, to implement some of the recommendations at that particular time of the committee report, to find new ways of implementing some of the others later.

Indeed, in the case of the Conservative government, as I recall, with housing policy, I was very frustrated that they were moving so slowly, but eventually a number of the recommendations of the justice committee on housing policy were implemented over a period of time.

So I say to you that if you have specific recommendations that you'd like to discuss, we would be happy to go down the list and we're still happy, of course, with public hearings to have further input on those recommendations.

Mr Grandmaître: I'm sure in the next three weeks or four weeks you'll hear from different agencies or public groups that don't agree with you or your ministry's decision. I realize that it's not easy to satisfy 100% of all of these groups. I realize this. But when you go around this province and talk about planning, I would say at the

present time municipalities are going through some very difficult times. They want to be their own boss; they want to do their own planning.

You said in your opening remarks that the province wants out of the planning process. Well, if the province wants out, I don't think that the Sewell report or Bill 163 really answers the municipal concerns that they can be their own boss. I'm sure that in the next three weeks we will hear from different municipalities and planners that will highlight some of my concerns and also their concerns.

On one hand, you say that you want out of the planning process, and yet you're not willing to look at a charter bill to look at these differences, to look at the partnership that could be created between municipalities and your ministry and also your government. How come on one hand you say, "No, we're not going to look at a charter bill," but at the same time you want out of the planning process?

Hon Mr Philip: Let me answer your first question. I don't agree that municipalities are saying that we are not giving them more authority when in fact we are. You only have to go into your own neighbourhood. As recently as a few weeks ago, I delegated to the city of Kingston the right to approve condominiums and developments. We've done that with I think every separated city in Ontario at the moment. Are there any that we have not? There are a few left, but we are working with them. We have certainly said to them that we want to work with them on their official plans and to give them more authority. They've recognized that.

With regard to the charter, let me deal with it this way: I think the position of the Premier was quite clear, and indeed at AMO I had many, many municipalities come up and say to me: "We want to commend the Premier for his excellent performance. He was absolutely dead honest in what he said."

What he said was this. He said, "I've had my experience with trying to work out grandiose charter plans and I would like to do workable things that create cooperation." I say to you that we are doing that, not just in this bill but in community economic development, which I am being praised for all over the province, and indeed we're having an awful lot of business from different municipalities.

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I was in Renfrew, which is another area in eastern Ontario, your neck of the woods, on Friday, in which the mayor praised this government for its community economic initiatives, which were driven locally. This is the only province that went to our federal colleagues and said the infrastructure program must be made, the decisions must be made locally and not by federal or provincial politicians, and AMO has praised us overwhelmingly for that direction.

I suggest to you that it's not only in this bill that we are moving in that direction, but we're moving on very practical ways to allow more autonomy for municipalities as we work through the process with them. The Pilkey task force, which the municipalities are very interested in

and have worked with, will be sent to them. It's at the publishers now; it will be sent to them on September 15th. We will be getting some immediate feedback and we will be moving very, very, very quickly on a program of implementing those recommendations.

I can tell you that the mood at the AMO convention was one of cooperation. People came up to me and said: "It's easy for somebody to say they're going to implement a charter in six months or a year's time. We find that a little hard to believe, quite frankly, and we would rather go the route of Premier Rae and of yourself in saying there are very specific things that are accomplishable. Let's get those things done and then we can work on other things."

There are a number of things that are very interesting in the charter. The Premier has said that; I've said that. Let's work on those things that we can implement. The pie in the sky, "Let's make a grandiose charter that will somehow put us in a box for years to come," I think is not on the cards as long as either we or indeed, as I understood the words of Mike Harris, the Conservatives would be in power. I think we've seen from the difficulties we've had in getting a federal charter that any one part can make the whole thing fall apart.

I believe politics is the art of the possible, the art of the practical. I want to move ahead. We've already done things which previous governments have failed to do in giving municipalities more authority, more say in their economic development, more say in their local decisions, and I'd rather work on those practical things.

I think the people I talked to who are members of ROMA, who are members of the francophone municipal association—and I met with them separately and talked to their convention—and indeed AMO are in agreement with that general thrust. Maybe that's why the Premier got such an ovation at the convention for his very honest stand on the charter issue.

Mr Ron Eddy (Brant-Haldimand): Thank you, Minister, for your statement. We all agree, I think, that the present planning process in Ontario is a mess, because when it takes over three years for approval of an OP in a rural municipality with no urban centre, there's something terribly wrong.

I really do think the ministry should have done something about correcting the situation long ago and we should have been dealing with amendments to the planning process as we went along. We should have been doing something in late 1990 or early 1991, if you found it such a mess, and it's terrible that we haven't, because it has resulted in loss of jobs in development.

I'm really concerned about the downloading of costs to municipalities in this whole thing, realizing that in effect you're requiring a two-tier system of planning in the counties and rural municipalities and in York. Yes, where there's single-tier planning now, you will have two-tier planning with the counties and regional municipalities of York and Peel having to come on—and there was another one, but I forget which.

I'm wondering how you're going to offset the downloading of costs from the province to the municipal-

ities in view of the fact that you said you're going to give them much more planning authority. Is it going to be part of the disentanglement process? Are you going to give directions to the OMB? Are you going to offset the costs and cancel the costs to municipalities of supplementary assessments? How are you going to offset some of the costs to municipalities? Because the municipalities are going to be faced with greatly increased costs.

The other part of the question is, although you've set out a number of new requirements for municipalities in planning, in exchange you've failed to withdraw provincial authority to interfere with resulting decisions which will result in delays and costs.

Hon Mr Philip: First of all, I haven't heard any municipality that has not agreed with me that the proposals that we are introducing will reduce time. There isn't one municipality that's come forward to me and said, "This is going to increase the time." In fact what they've said is that they are already involved in a two-tier system of planning, but that there are tremendous duplications by the provincial governments in the second-guessing of work that they're already doing.

What they would like to do is to have us reallocate our resources to working with them in a facilitator role so that they can do proper planning. If you have proper plans at the county level, at the lower-tier and upper-tier level, then in fact it results in less disputes going to the Ontario Municipal Board, less delays in getting a proposal through.

I suggest to you that what we are recommending will reduce the costs because we'll be reducing the duplication. Therefore, municipalities will have less costs, not more costs as a result of this act and other things that we're already doing.

Mr Allan K. McLean (Simcoe East): I have some short questions for the minister. I'd like to know when you're going to release the regulations concerning the implementation of the new planning and development policies.

Hon Mr Philip: We're working with the implementation committee as you know, Al. Our concern was that the regulations be very, very practical and that we not simply create policies that you couldn't implement. That's why we set up the implementation task force. They are working as quickly as they can and they are consulting. Certainly we will not proclaim the legislation before they are released, and everyone will have an opportunity of course to look at them.

We're aiming at proclaiming the legislation by January 1995 so obviously the regulations will have to be in place and be very visible for everyone to look at before then.

Mr McLean: So the conflict of interest then in this legislation, will that be pertaining to this election this fall?

Hon Mr Philip: Now I've said this and I've said this many times. I think someone—maybe it wasn't you, but someone from your party; it may have been Ted or someone else—asked me this question. I thought it was a good question.

What we've said is that we're publishing the conflict-

of-interest legislation. The rules are very clear. In fact we even have a copy of the disclosure form so that people that are running for office know what it is that is likely to be proclaimed. That way everyone's on the same playing field. No one runs for political office without the knowledge that they're likely to do this once the bill is proclaimed.

Mr McLean: Would they have to apply then after 1995?

Hon Mr Philip: Yes, they apply after 1995. If you're elected in the next few months, when the act comes in in 1995, then you'll be required to comply. We've been running workshops and things like that for anybody who wants to learn about it.

Mr McLean: Municipal councils have the final decision on the issues of minor variances and no chance of appeal.

Hon Mr Philip: Yes.

Mr McLean: Could you give me the definition of a minor variance?

Hon Mr Philip: Yes. I'm going to ask Dana to comment on that. We've had some problems that people have actually been trying to introduce major development under so-called minor variances. We of course don't accept that. But I think that you'll find that there is a way in which someone can appeal. That, of course, is if there is a matter of law involved, then someone can still appeal to the court, and we have to preserve that right.

Mr McLean: But what is a minor variance? That's my question. What is a minor variance in your definition?

Ms Dana Richardson: It very much depends on the type of application that's before the council or before a committee of adjustment. What you're talking about is a variance from the municipality's zoning bylaw. There is no clear-cut definition that it's this much as opposed to that much, but it very much depends on the circumstances. It may be something as small as putting on a porch in a backyard in the city of Toronto or it could be changing a lot line, and it could be some minor change to actual use of the property, which doesn't actually affect the more general use of the property. It very much depends on the type of application.

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Mr McLean: So for a minor variance do you have an environmental impact study?

Ms Richardson: No. The environmental assessment process deals with major infrastructure projects. For an environmental impact study there are certain requirements under the policy statements that would have general application in the municipality.

Mr McLean: The other question I have is with regard to Bill 163 is amending the section by the infamous phrase that all planning decisions "shall be consistent with" provincial policy statements. Considering the legal framework that now exists with the current act phrase "have regard to", why have you changed that?

Hon Mr Philip: We changed that, first of all, because I think the commission in its wisdom felt that that was necessary. Secondly, because there were too many

instances of "have regard to" that simply had very little regard to, and because, quite frankly, those involved in the environmental movement felt that if we were going to give greater autonomy to municipalities, we had to have a policy system up front and that development proposals had to be consistent with those policies.

I think that the words "shall be consistent with", and we could have made it even stronger than that—the stronger wording would have tied municipalities in an absolute straitjacket and we think would have caused certain aberrations that would have been quite silly at times.

We think that this is the balance, and we've had a buy-in by all of the partners. I realize that there may be some developers who would rather not have that there, but I think that they also realize that it's a set of balances and that this is the balance that gives comfort to the people who are heading up community groups and environmental groups. This is one phrase that I would not consider an amendment to.

Mr McLean: In your appeals—

The Chair: There are three minutes left and Mr Jackson wanted to ask some questions.

Mr McLean: All right. They went over time. I guess I can too.

Hon Mr Philip: I'm flexible.

Mr McLean: The question, Mr Minister, the fact is that the appeals process is going to be in place and the 180 days is in there, and once that is not met, then they can appeal to the OMB.

Hon Mr Philip: Yes.

Mr McLean: Well then, what is speeding up the process if the appeal to the OMB could take two years after the time it's appealed?

Hon Mr Philip: First of all, we anticipate that by having the policy in a way that everyone knows the rules will reduce the need for the number of appeals. Secondly, we believe that the facilitator process that we have set up both under Dale Martin and at the OMB is reducing the number of appeals to the board. Lastly, by our front-end loading system, if you want, of working with municipalities to have official plans, we're going to have less ad hocery and therefore less appeals going to the OMB. All of these taken together, I think, will reduce the number of cases at the OMB.

Mr Cameron Jackson (Burlington South): Minister, you indicated that you were proposing some amendments. Can you give us a time when we'll be able to see those amendments? Will they occur at the front end or at the tail end of these hearings?

Hon Mr Philip: We want to have some hearings first and get some input and then some of the amendments will come as a result of some of the hearings. We've had some kind of unofficial suggestions, if you want, of people coming and talking to us, municipalities and so forth, making some proposals. They're going to come forward with proposals during the hearings, and we'd like to respond to them.

Mr Jackson: Fair ball, Minister, but quite frankly

you've indicated that you've already embraced these amendments. I think we're going to have a briefing this afternoon. The public is fairly enlightened in terms of how consultation works, but it's incredibly helpful to this committee that is charged with the responsibility of amending this bill if we know well in advance. That's the normal course, unless there's something covert here, but I just felt it's a standard request and I don't see a great difficulty.

Hon Mr Philip: I think it's the same request that I'd make if I were in your shoes. What I can say is, a number of the amendments are of a technical nature. When you're briefed by staff this afternoon, we'd be happy to give you some of the draft, keeping in mind that the draft is only a draft, subject to the hearings of the committee. But we'll be happy to share them with you.

Mr Jackson: I wanted to get into the municipal conflict of interest, which is embracing school boards. I wonder if, in any of the commission's hearings and any of the regulatory framework that will back up any amendments, any consideration was given to issues around school board trustees and being members of the teachers' federation. I know that's been the subject of a couple of discussions and reviews.

My reason for raising it is it strikes at the heart of governance. On one board I'm familiar with with 20 trustees, 12 of the trustees are related directly or are teachers employed in neighbouring boards, so you're literally left with eight trustees who can only be on the salary and the finance committees. So it strikes at the heart of good governance.

I wonder if you at all put your mind around this issue. Not only is it a conflict de facto, but these people have been disfranchised from the governance process and it does weaken a form of our local governance. Could I get some feedback from you on this, if you can help with it at all?

Hon Mr Philip: I think you're right and I think that conflict of interest can go to the point where it can be silliness and in fact create the exact opposite to what you're trying to achieve. Dave Cooke is looking at that and we will be hearing from him on it. I think it's a point well taken. We could probably come up with a series of other examples similar to that but in other areas, and I think that this is something that we're having to deal with.

Mr Jackson: And my final question—

The Chair: No, I'm sorry, Mr Jackson, we went over time. Mr White.

Mr Drummond White (Durham Centre): Mr Minister, I'm of course very, very interested in this bill from a local standpoint. In my area we have a number of issues that are outstanding. Community groups, I'm sure, will be pleased to see this comprehensive statement.

What I am interested in here is, I understand that this comprehensive set of statements is probably a first in our province in terms of its being compiled in this way. I'm wondering if you could comment a little bit about your ministry's efforts to make this set, which is comprehensive, accessible and comprehensible to citizens' group.

I know in my area there are both naturalist, environmental groups which are concerned about the wetlands policies and how effective that would be in protecting a class 1 wetland in my area and the downtown business association which is concerned about how well the official plan is being followed of the local regional government.

I guess the issue I have really is: What kind of efforts are we making to make these informations accessible to people so they can use this to hold government, to hold development accountable?

Hon Mr Philip: First of all, I think it is fair to say that, before this legislation came in, there were policies, of course, of the provincial government. The problem, though, that people from the development industry have told me that they had was that often they would buy property, hold on to it for two or three years and then find out that they couldn't use it for the purpose they had intended because there was some policy they didn't know about.

One of the things that this does is it brings the policies, many of which were already in existence, into one coherent and cohesive set of documents that can be studied. As one developer put it to me: "I can live by any rules. Tell me what I'm allowed to do on a particular piece of property and I'll do it. But don't tell me three years after I've paid interest on the property and am carrying the property that I can't do it, because that really puts me at a tremendous disadvantage."

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What we've done is we've put them together. In the case of the Ministry of Housing and some other ministries, they've added—they've perfected, if you want, as they saw it—and cabinet has approved these policies and they have been sent out. I believe that the mailing was 19,000. I think that it's probably a pretty wide circulation, but if anyone has not received a copy and wants it, I'm sure that if they write to the clerk of the committee, Donna Bryce, she'll be happy to send them out a copy; or write to our ministry and we'll be happy to send them out.

Mr White: Nineteen thousand—

The Chair: Mr White, just a reminder, every government member wants to ask a question.

Mr White: Oh, of course, yes. That's a pretty wide circulation, so a lot of them, the environmental groups, the business groups, would be informed of the policies?

Hon Mr Philip: Yes.

Ms Margaret H. Harrington (Niagara Falls): In your opening remarks at the beginning you mentioned that this change was with regard to environmental issues, heritage and also the economy. I believe at this particular time in the province of Ontario the heritage issue is important, particularly in the area of Niagara. What do you think, personally, is the greatest step forward that you are bringing to us today with regard to the issue of heritage?

Hon Mr Philip: I think archaeological sites are included under the statement. It's a published statement that everyone can examine. I think this is a major

improvement. I think that in some ways the answer that I gave to Drummond White was similar. It does protect historical buildings. I think that it's something that is fairly clear and will help those who may be concerned about this. That would be the only answer I'd give to you on that question.

Ms Christel Haeck (St Catharines-Brock): I'd like to welcome the minister here. He's always prepared to give full answers. Definitely he's aware of some of my concerns, heritage being one of them, and we'll obviously have a chance to get into that when we're closer to home.

I did also want to raise the interesting point of minor variances, and definitely it's been a concern that's been raised. I do want to thank you for those folks who are interested in glossaries—and I guess my library background being what it is I tend to look for them. There are some important things there.

But I find with the minor variances I really do have to ask the question. There is very clearly on the part of constituents a concern that what starts off as being a few inches here or there as far as coverage on the property, all of sudden in some instances doubles in size. We do have instances in my area where that has occurred under the definition of a minor variance.

I'm wondering if, in fact, in the process of dealing with the developing of the glossary and other matters like this, for those folks who are not technically proficient at looking at these things on a regular basis, we could be as clear as we can be so that it is just as far as a few inches or we are talking something that, in my mind as a layperson, is minor rather than in some instances doubling the size of a development.

Hon Mr Philip: Minor variance is a concept that is difficult to define because it has to be defined by the facts in each individual case. But the problem we have been having is that a lot of very minor variances have been clogging up the Ontario Municipal Board. That's bad use of our resources and we don't think that minor variances belong there. We think that local councils or their appointed committees are the best to decide.

What you have here under this legislation is a series of guidelines, of rules, if you want, on open government. Having put in those kinds of requirements, and many municipalities follow these already—I had the mayor of Ajax tell me at AMO: "We're doing all of these things"—well, great, that's wonderful that you are, but by having an open system that is transparent, that is open, I think that the individual cases of the minor variances will be dealt with in an honest, open way at a local level. Mrs McGillicuddy's extension of her porch, which is being objected to by her neighbour whom she had a disagreement with at the Legion three years ago, is not something that belongs at the Ontario Municipal Board and that's what we're trying to stop with this.

I think that if you have the balance of openness, which a lot of municipalities already have, a guarantee of transparency, then by working with this, you'll see that it'll work better locally than being second-guessed at the OMB and holding up some poor fellow who needs the job of putting Mrs McGillicuddy's porch on six months because the neighbour's taken it to the OMB. We think

that small things like that have to be decided locally.

The Chair: Mr Wiseman, one last quick question, please.

Mr Jim Wiseman (Durham West): I'm glad you raised that. I want to ask you this question, and I haven't been able to find it in here. Let's say that, for example, the town doesn't want a developer to do something, the local residents don't want the developer to do something and the town turns down the proposal in council, and then the developer goes to the Ontario Municipal Board and the Ontario Municipal Board says, "Go ahead."

Are we making any changes in here that will allow for local autonomy, for a council that has consistently said that an official plan amendment is not acceptable, not wanted and not in the best interests of planning in the town, then can be refused at the Ontario Municipal Board? Why should it even go to the municipal board if the local council has already said that it doesn't conform to planning, doesn't conform to official plans and doesn't conform to the bylaws? This has happened in Ajax once, and it appears it could happen again.

Hon Mr Philip: Let me answer this way. I think that by working with municipalities to have official plans and by having policy statements up front, then we're going to have less capriciousness on either side, be it the developer who is trying to do something which would be inconsistent with good planning or a municipality where for whatever reason the wish is to stop something.

I think that what we have to have is a series of balances, and the balance is the right of individuals who have invested money and who are behaving in a lawful way to do certain things that are allowable under law with their property. You have to have quasi-judicial bodies that will make a decision when there are the individual rights of people, and those people may be one person—it could be the owner of a property—and those of governments, be it federal, provincial or municipal governments.

That's why we've set up an OMB to make decisions where, if somebody is doing something contrary to policy, it can be appealed to a judicial or a quasi-judicial body. I think that's important and I don't intend to interfere with that right of appeal to the Ontario Municipal Board where someone feels that his or her rights are being interfered with.

The Chair: Minister, we ran out of time.

Hon Mr Philip: Let me just add that I don't think that provincial governments or federal governments or municipal governments can play God. We do have to obey the law. Maybe that's why we have courts and why we have OMBs to ensure that happens.

The Chair: Thank you, Minister, for your presentation and for coming here this morning. I want to thank the ministry officials as well for coming and giving their time and assistance to us.

Hon Mr Philip: Thank you, and may I thank members of all parties for what I thought were very thoughtful and constructive questions. I look forward to your deliberations. I have a lot of confidence in Pat Hayes, who has managed to bring other legislation forward on

my behalf. As Art Eggleton and I and others go around the province, no doubt we'll be seeing you as more and more development goes on in your areas, and particularly infrastructure of various kinds. Thanks very much for having me.

The Chair: Thank you again, Minister.

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COMMISSION ON PLANNING AND
DEVELOPMENT REFORM IN ONTARIO

The Chair: I call Mr John Sewell, chair, Commission on Planning and Development, and Mr George Penfold, another commissioner. Welcome to you both. I understand your presentation may be up to 20 minutes, possibly a bit longer. That would be great, and then we'll leave time for questions.

Mr John Sewell: We'll try and keep it as brief as we can. George and I are both very pleased that we can make this presentation to the committee. As you know, our report was issued about 15 months ago, and there's been a lot of action on it, which we're very happy about. The policy statement has now been adopted, and of course we've now got Bill 163.

George and I will both be speaking, but I would like to begin by setting the context into which we made our recommendations. There are five big problems the commission was trying to address. Some of these have been referred to, but it's important to keep them in mind because these are the problems that in fact we're trying to solve through legislation.

The first problem of course is that the planning system is clogged with approvals at all levels: at the municipal level, where in some municipalities it takes two or three years to get a rezoning, at the provincial level, where it can take two or three or four years for the province to approve something that's relatively simple, or again at the Ontario Municipal Board.

Secondly, there's an awful lot of ad hoc decision-making. In fact some people call it capricious, where it seems to depend on the individual application. Nobody seems to know exactly what the rules are. There's no certainty in terms of how applications will be treated.

Thirdly, there's a lot of second-guessing by different levels of government. In some cases upper tiers second-guess lower tiers, in many cases the province second-guesses municipalities, and of course there have been complaints that the OMB second-guesses people as well. In fact we don't have a planning system where there's autonomy and trust.

Fourthly, the needed protections to the environment simply aren't there. Lots of people told us all the time that this indeed was the case.

Lastly, decisions took much too long.

Our job was to try and address those five issues and see what kind of approach we could take to actually resolve them in a long-term method. As you know, there are five general kinds of recommendations that we made to address them.

The first is that the planning system in Ontario should be based on policy. We believe, and it seemed a lot of other people agreed as well, that if we had clear policy

the province had set out, that would provide a very consistent and easily recognized basis on which decisions could be made. Everyone would be singing, to use David Crombie's terms, from the same hymn book.

Of course if you are going to have a system that's lead by policy, you'll want to ensure that people pay attention to that policy, which is why we came up with the proposal that decisions should be "consistent with" policy. We struggled with a bunch of other words, including the words that are found in the Charlottetown agreement, which of course didn't get anywhere. I think the words there were decisions had to be "not inconsistent with." We decided not to go with that.

We came down and said that we want something stronger than "have regard to" because we know there are court decisions that say, if you do this, you say: "Oh yeah, this is interesting, thank you very much. Now let's go ahead and make decisions." Of course it's said that's having regard to something. We wanted to be stronger than that. We believe that you have to do that if you're going to have a policy-led system, which is the basis of our proposal.

Secondly, we wanted to ensure that the number of approvals needed from other levels of government were reduced. We believe very much that most municipalities are quite capable of making good decisions. Do they make good decisions all the time? No, but mostly they do. In the way that all other democratic bodies mostly make good decisions, we wanted to ensure that wherever municipalities were capable of exercising good decision-making power that in fact happened. So we gave municipalities a lot more decision-making power, particularly in regard to subdivisions and official plans.

Thirdly, we tried to simplify the role of the provincial government in municipal planning and in fact to get it out of a lot of overseeing of municipal activities. We thought that that was very necessary. We believe the province has a very strong role to play in planning, particularly in terms of policy, but it shouldn't be standing over municipal shoulders all the time. We suggested that in fact one ministry should be given a lead role in approvals rather than having all ministries playing each other off as often occurs.

We tried to restrict provincial intervention into municipal decision-making, particularly by suggesting that there should be a provincial holding bylaw, the same way that municipalities can do that, to freeze the situation while you work out a new policy. We thought that was a much preferable approach to one that allowed the province to intervene for reasons that weren't particularly clear. We tried to ensure that the applicability of ministerial guidelines to municipal action should be restricted. The policy should apply, but in fact the guidelines should be there for advice.

Fourthly, we tried to clarify municipal responsibility in approvals, in creating official plans, in planning across municipal boundaries. That's a very complicated matter, particularly in terms of planning on a watershed basis, but we wanted to be clear about that. We wanted to be much clearer about the roles of the public in decision-making. Of course, into all this fits the whole question of

minor variances. We think that councils are quite capable of exercising that power very well.

Lastly, we wanted the process to be more timely. That's why we made recommendations that set time limits on rezonings and plan applications and approval times. We made some strong recommendations for a speedier process at the OMB, one that was a lot more consensual.

These are the five general strands of our recommendations into which our 98 recommendations fit. As one can see, the kinds of changes we were making were quite substantial. We recognize that trying to take a package like this through the maze here at Queen's Park is not easy. It's very difficult and the hurdles are absolutely immense. As we say, we're quite pleased that things have gone so quickly and that the government has been able to address it. We believe a reason for that is there is such wide-spread agreement among all of the people we talked to and those who submitted briefs to us.

We think there's a large body of people out there who are very interested in planning reform, want to see it happen, think this is one of the few opportunities we're going to have in the next decade or two to get a really good, strong planning system in place. Therefore, it's important to get all the details right or at least as correct as we can think at this point in time.

During the last year, George and I and, on occasion, Toby, who of course is now at the other end of the country, have tried to make ourselves available to staff, to all sorts of people, to groups, to municipal councils, to talk about our recommendations and to try to ensure that they're understood and that they can be grappled with. It's in that light of trying to be helpful that we're here today.

What we wanted to do was note some of the areas where we thought there could perhaps be some amendments to the legislation. We wanted to bring them to your attention so that you can consider them. I'm sure you're going to hear lots of other people talk about these questions, but they're ones that we thought were relatively important. We have a number of them, and George and I will talk about these alternately.

Mr George Penfold: As both John and Mr Philip have said, the idea of a comprehensive set of policies is really key to unravelling some of the concerns that we have in the planning system and moving forward with some significant changes. John has addressed the issue of the language, of having consistency with those policies and actions. The issue that I'd like to address is something added to that, and that really is the applicability of policy.

In the previous legislation it was clear that policy approved by the province applied to municipalities and their actions. In our consultations we had a lot of concern from municipalities and interest groups that in fact there were a double set of standards, that the province could use policies to guide municipal actions but had a fairly free hand in their own planning and development activities to make decisions that in fact weren't consistent with policy.

Our recommendation actually stated that the legislation should read that if policy is in effect, it should apply not only to municipalities and the private sector, but also to provincial ministries in reviewing municipal activities and in their own actions. The legislation as it's currently drafted reads only "the Ministry of Municipal Affairs and municipalities." So the first suggestion we have is to look at the applicability question of policy and to expand that to include not just the Ministry of Municipal Affairs but other ministries at the provincial level.

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Mr Sewell: The second change also has to do with the province. Not only do we think it's important that everyone should be bound by the same planning policy, but we think that there should be clear opportunities for the province to intervene when it feels things aren't going right and that clarifying those opportunities for intervention will do an awful lot to assuage the concerns of municipalities.

It's for that reason that we thought that the provincial ability to interfere with OMB decisions by declaring a provincial interest should be done away with. But we thought a better power was the interim control order power, where the province could say, "We're setting an interim control power in order to study this situation and come up with recommendations within a year's period of time."

That power is now one that is available to municipalities. We think it should be made available to the province, but in fact the other power, which is not one that people seem to have a good handle on, should be dispensed with. So it's replacing one way of proceeding with another.

Mr Penfold: The third issue, folks, is on development in rural areas. It specifically addresses the question of onsite services and septic systems. As you may have heard, that was a considerable theme in our work. There was a lot of controversy about it. It's a very, very important question to resolve in terms of rural communities, particularly resolving it in a way that allows them to see some future potential for development in their communities.

There are about a million septic tanks in Ontario. Most of the information that we were able to gather said that about a third of those systems in fact are failing, which is causing significant problems in ground and surface water, about another third of them are very marginal and about a third of them are actually working well and would pass inspections without any problem. Dealing with that existing inventory of septic systems in a positive way as well as getting a good system of inspections going in the future seems to be key to creating opportunities in rural areas.

Our proposal was that septic systems that are in place should be inspected every five years. We were astounded at some of the comments we heard from people who had no idea what a septic system was, how it worked, where it was, even though they had them on their property. So having a system of inspections seemed to be really important to keeping that piece of infrastructure working.

That was our recommendation: inspection every five years. It should be on a user-pay basis and could be managed by municipalities, delegated or contracted by the Ministry of Environment to that level. That recommendation is not addressed at all in the legislation and it's one that we think is extremely important to the welfare of rural areas.

Mr Sewell: The fourth area has to do with rights of appeal. This is an area that was not addressed by the commission, but in fact it is found in the legislation and, in our opinion, we wanted to bring it to your attention because it is not something that we considered or recommended.

As I understand it, there's a section in the legislation which tries to ensure that disputes with municipal decisions don't proceed to the Ontario Municipal Board unless the person who's unhappy about the decision made some attempt to try and present an alternative viewpoint to a municipal council.

My interpretation of the proposal is that, if a person has not objected to a council before the council makes a decision, then that person has no automatic right of appeal to the Ontario Municipal Board. That is not a proposal that we made, it is not something we considered, and we think it might be a bit of a problem, so we wanted to draw that to your attention. In our brief we cite several examples of where that section is found in the legislation.

Mr Penfold: The next item has to do with how the legislation deals with the question of site alterations. This is an issue really that gets to some of the current concerns, for example, about protection of natural heritage or built heritage, as examples, where a proponent may come in with a proposal, the municipality says, "Wait a minute, you have a feature that's protected on your site," either a wetland or a forest, "so you need to be aware of that," and the next morning someone drives by from council and sees that site and it's been levelled. There's no good mechanism at the present time for controlling that kind of activity. In the morning you had a wetland; the next morning you don't.

The response of the legislation to the recommendation is that municipalities need additional powers to deal with the placing and removal of fill, which deals with a component of that question. Our recommendation went further than that and actually suggested municipalities should also have power to deal with tree cutting and vegetation removal as part of that whole package, particularly to get at the question of protection of natural heritage, environmentally sensitive areas.

Mr Sewell: The sixth area is about planning authorities. One of the things that we found when we were down in the Kingston area is that some of the county structures down in that area don't work in terms of planning, that the differences within a county like Frontenac are immense.

You've got all this activity along the 401, you've got some stuff in the middle which is sort of cottage country, and then you've got some remote stuff to the north. In fact it's very, very difficult for all these townships to get together and plan on a countywide basis. Of course, if

they can't plan on a countywide basis, they don't get any of the benefits of what we see as the two-tier planning system of getting out of provincial approvals.

We were looking for a device that would permit those situations to coalesce around some kind of joint action and we proposed this idea of a planning authority. We said that in areas where counties did not have plans, then municipalities should be able to get together, townships should be able to get together to create a planning authority that would be able to have some real power. They could combine their limited resources to actually do interesting things.

That's sort of reflected in the legislation, but unfortunately there is a term which indicates that you could create a planning authority in a county which already had a plan. That, as I know, has caused a great deal of confusion among counties with plans because they fear that in fact the county might now get dismembered.

I think it's something that's relatively easy to amend, which would preserve the idea of a planning authority without threatening existing counties with plans, and it's a change that we would commend to you.

Mr Penfold: The next item has to do with comprehensive planning or planning at the municipal level and the scope of it. If there is a comprehensive set of policies, then it would make sense that municipalities in their plans, upper tier and lower tier or county, region and the local municipality, should respond to that. So we had a recommendation that in fact the legislation contain items that would require municipal plans to address in a comprehensive way those issues that are addressed in policy.

The proposal in this draft of legislation is that that content not be in legislation but in fact be in the regulations. John will be speaking to that. So that part of it is covered.

The other part of the debate we had is the extent to which municipalities in dealing with the application of policy should be considering alternatives. As you know, consideration of alternatives is built into the Environmental Assessment Act.

We'd recommended that that should also be included as part of the planning process at the municipal level in dealing with municipal plans and major plan amendments for two reasons: one of transparency in the process, and secondly, then putting in place something by way of process and review that would link nicely with the EA process without any subsequent need for class environmental assessment and so on.

It might then be addressed on the basis that alternatives had already been addressed by the municipality in their planning process. That was the rationale for it. The question of looking at alternatives is not addressed in the bill at this stage.

Mr Sewell: Lastly, we'd made a number of recommendations for legislation on questions of real detail, on things like what should be in an official plan. We thought it was useful for a municipality and people in it to say, "Where do we go to find out what should be in an official plan?" "Well, a piece of legislation, and here are the 15 things that should be in an official plan or the

official plan should address.”

We thought there should be legislation requiring that planning take place on a watershed basis, so if you have two municipalities sharing the same river, they would have to get together and talk about how that river affected planning matters. We thought that there should be strong legislation about public involvement in planning and in public notification.

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Our understanding is that these matters will come forward in terms of regulation. We haven't seen them yet. I think the minister made a comment about how they were being looked at by the implementation committee. We think it's important to pay attention to those questions to ensure that those levels of detail are in fact clearly spelled out whether in regulations or, as we had recommended, legislation.

The last point is about intervenor funding. We had recommended intervenor funding and we recognize that that is not a proposal that has been agreed to. We think there are other ways of ensuring that those who come forward to clearly protect the public interest, where they have no personal interest in it, receive some kind of help along the way.

One way of doing that, as we'd recommended in recommendation 87, was to allow the Ontario Municipal Board to award interim costs so that right towards the beginning of a hearing the OMB could say: “Well, gee, this is an important matter. It's clear that this is a big issue and it's not just affecting the one person who's brought it forward and in fact we'll support that with an award of interim costs.” It's an alternative to try and ensure that those who are protecting the public interest aren't always doing it at horrendous personal expense. So we commend that to you.

There are some of the ideas that we think the committee might talk about in terms of amendment to the bill. As I'd said, this is our one chance to try and get it right and we wanted to ensure that we were giving you our best advice in this situation. I'm sure that George and I are delighted to be of any use we can to the committee now or in your deliberations. Anything we can do to help in this we'd be pleased to.

The Chair: Thank you both. We'll begin with the third party, Mr McLean, nine minutes per caucus.

Mr McLean: I have a house two miles out of Kenora with a septic system. You're saying that I should have to have that inspected every five years?

Mr Sewell: Yes, that's correct.

Mr McLean: My farm is high and dry on sandy loam soil, and you're saying my septic system has to be inspected every five years?

Mr Sewell: Yes, that's correct. Obviously, in your situation it sounds as though the inspection is going to be a fairly simple one, but the data on most septs is not quite that way. The Ministry of Environment at the initiative of cottage groups has been doing inspections around lakes and they've found that two thirds of the septs around those lakes are failing, which is one of the reasons why water quality is collapsing.

We think that in those situations having regular inspections of septs will be very good. We recognize that someone in your situation might find that a small intrusion. We think it to be entirely possible that in situations such as that maybe you want to extend the regularity; you know, instead of every five, maybe every 10 years or what have you. I don't know.

Mr McLean: Well, I agree with your last statement with regard to around the water areas, but I certainly don't agree with northern Ontario, Thunder Bay and Atikokan and some of those places, that if they have a septic system, they have to have it inspected every five years, because the health unit usually—they're usually good for 20 to 30 years when they are approved. I think that's putting a great burden on the taxpayers of the province to have that in legislation.

Mr Penfold: The 20 to 30 years is certainly absolutely right in terms of the structure of the septic tank itself. One of the difficulties is just the ongoing maintenance. It's like a car; if you don't put oil in it or you put the wrong oil in it or you don't maintain it well, it fails.

One of the requirements of management of a septic system is ongoing maintenance by way of pump-out. Sometimes septic tiles get broken with vehicles going over them or whatever. They are not a foolproof system. Most home owners don't understand the systems and how they work, so our thought was that, if someone came onsite every five years and had a look at it, they could advise on either regular physical maintenance that might be appropriate, extension of the system if something had been added to the house, or pump-out if that was required.

Mr McLean: Have you ever been involved in having a septic system installed?

Mr Penfold: Yes, I grew up on one and I had a rural property myself that I had to redo the septic system on.

Mr McLean: Septic systems, if they're working properly, don't have to be pumped out very often.

Mr Penfold: Well, that's one of the questions. They do not dispose of everything. There are solids that settle and they can plug up the field tile.

Mr Sewell: I gather that the Ontario home warranty program is very concerned about septs. They've had major problems. They've just gotten into adding them to the warranty and now they've got a lot of problems. I'm sure there are some good septs that are well maintained, but I think we should be worried about the many that are not.

Mr McLean: I want to move on to the OMB approvals, the appeal process. You indicated that you wanted the time shortened. How is that going to happen?

Mr Sewell: The proposal that we had made was that the OMB should be required to call a meeting of the various parties to a dispute within 30 days of receiving the dispute. Mr Philip had mentioned that they'd had good experience in terms of bringing people together and getting rid of disputes. We think the same would happen at the Ontario Municipal Board.

We thought that that was probably a very strong way of proceeding and we know that the OMB hasn't institu-

ted anything like that as a regular practice, but they are certainly trying to figure out how to move in that direction.

Mr McLean: But you're saying the province should be given an interim control order. Are you saying that they should have an order that they can deal with it and to be settled within a certain period of time?

Mr Sewell: No. An interim control order is where someone is doing something for which there's no rule to prevent it, but you know it's something that shouldn't be done. Then in fact you can put a control order to stop that happening.

Municipalities do this now with more frequency than some would like, but they do it where someone is doing something and the municipalities say, "No, we're putting a freeze on that while we do a study of it." It's that kind of power we think should be available to the province.

I believe that that power wouldn't be exercised any more than maybe once a year throughout the whole province. It's not a power that would be used often, but it should be there. There should be some way that the provincial body can intervene where it's clear there's a public interest that hadn't been previously thought of.

Mr McLean: But you're saying the appeal should be heard within 30 days, if there's a backlog and the OMB doesn't do it. I mean if the appeal is not heard within 30 days, then are you saying that the appeal is not to be taking place?

Mr Sewell: No. We're suggesting a meeting of the parties should be held within 30 days and we'd actually suggested that the OMB could appoint part-time members in places—well, Kenora would be an example—to bring those parties together. We believe that many disputes that now go to the OMB after waiting around for 18 months and then take up a week's hearing time could be settled if people sat down and had a meeting.

Mr McLean: The reason given for not requiring a review of alternatives—"required for major plan amendments": that's in your brief under "7. Comprehensive planning." "The legislation does not make distinctions between major and minor amendments." Are you saying in that section that they should?

Mr Penfold: Yes. Two things. There should be a recognition that adding 100 acres of development land to an urban boundary is a different issue than changing a designation on one side of an acre or half an acre from, say, low-density residential to commercial or mixed commercial-residential. It's those major additions that do involve significant issues of extension of services and infrastructure. Looking at alternatives in the context of those amendments would really be useful not only from the standpoint of good planning but also to provide the basis of linkage into the Environmental Assessment Act.

Mr McLean: What guidelines would you use for intervenor funding? Who do they apply to and how would they make that application?

Mr Sewell: We had made some very detailed recommendations about the guidelines for intervenor funding, and I think probably the easiest thing is just to refer to them in the report, recommendations 85 and 86.

There had to be a clearly ascertainable public interest that was consistent with provincial policy, that you really did need some separate representation of this interest, that the person who was intervening didn't have a personal interest in the matter—

Mr McLean: Who would approve, John, his application?

Mr Sewell: Our proposal was that the application should be dealt with by the Ontario Municipal Board, a special panel. We recognized that there were some problems about that. That was the problem, that you'd get into a great big waiting list for intervenor funding. We tried to find a way around that.

The Chair: Thank you. Mr White is next. Just as a reminder, all four members want to ask questions.

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Mr White: Thank you, Mr Sewell and Mr Penfold. I have a number of concerns and I just want to touch on a couple of them, if I might.

The issue of integrity: I think your report and the recommendations and frankly the act speak to a great number of issues of integrity, and hopefully there will be some reinstalled.

I think there was a great deal of concern back in 1989 and 1990 not so much about the planning process but about how the planning process was being misused for the personal benefit of a number of individuals who would benefit in a very straightforward pecuniary way, people who had been elected to a public office and were abusing their position.

Was that not one of the main reasons that the commission was originally appointed? I'm wondering to what degree you feel that the recommendations that you put forth in that regard and that are in the bill will address that concern.

Mr Sewell: I can't say whether that's why the commission was appointed. I'm not the person to ask that one. But I do believe that the recommendations that we made were made in the light of those kinds of activities, trying to ensure that they wouldn't repeat themselves.

We thought there were two major problems that led to abuse of the planning system and personal benefit: First, nobody knew what was allowed and what wasn't allowed. There were no rules for anybody. Could you get to do this on this? Well, maybe you could if you talked to the right person and so forth. Second, timing: There were a lot of stories back in 1989 about people jumping the queue. Jumping the queue meant that they were way down there for approvals and they jumped up here very quickly because they played cards with the right person or whatever.

We addressed those by saying, "Let's have clear provincial policy as to what's permissible and what's not, and let's have a process that's quick." We believe that both those will go a very, very long way to ending abuse. It will not totally end abuse—we're dealing with human beings—but we think this is the best kind of system available to try to ensure that there is no abuse to the planning process.

Mr White: Along those same lines, you very clearly

want to make sure that provincial interests are adhered to and that no ministry or provincial government goes beyond what is an intent here in the bill in terms of comprehensive policies.

Within the bill, we talk about the Ministry of Municipal Affairs, municipalities etc, but in terms of planning, in terms of site location for, say, a provincial hospital, a courthouse, whatever, would not those ministries have to go through the same process of application, through the municipality, the region, as any other body would have to?

Mr Sewell: No, that's not always the case. In fact the province could decide to do things that are outside of provincial planning controls, for various reasons. We've heard lots of examples of cutting down fruit trees in order to create a lay-by for a highway, those kinds of things, which, if you tried to do it as a municipality, you never could.

I think there's an equity question as well, that if municipalities have to pay attention to policy and be consistent with it, so should provincial ministries. If you ensure that everybody is playing by the same rules, then I think that'll help ensure that the rules are good rules.

The idea that the province should set the rules for someone else to play by means that they don't have an interest in ensuring reasonable rules. But if they're rules they have to play by as well, then I think we're better off. Having a set of rules for everyone I think puts everyone in the same position. If the rules aren't working, good, let's change them.

Ms Haeck: I'll try to be quick, realizing that other members have similar concerns. One of the things I've heard locally around the whole planning process is that people just don't understand what planning criteria are. I refer to it as the arcane art of planning. In truth, residents really and truly have a concern about what information they are given.

I'm thinking even of some infrastructure projects that the municipality locally has referred to, that people just don't know. Having these things in place, all of a sudden it opens the door to all kinds of development. So that's one: what kind of information public meetings should have available to residents. Even the septic systems, I mean, what are alternatives to septic? Because I know that those situations are there.

Residents do have notice, notice as far as, you know, the little sign that's 10 feet away from the ditch that they can't read because it's only 8½ by 11 and on maybe pink or maybe yellow, but it still doesn't tell them what in fact is being planned.

I guess the question that a lot of people locally do have is, especially since I do represent Niagara-on-the-Lake, relates to being more explicit around built heritage. A lot of what you say relates to natural features and they're very supportive of those. They have felt that there should be a little bit more comment with regard to some of the built or cultural heritage that some of our communities—not only Niagara-on-the-Lake, Kingston as well—do in fact hold for all of the province, not just for that community.

Mr Sewell: I unfortunately forgot to bring my copy of the comprehensive planning policy statement with me.

Ms Haeck: I can give you mine.

Mr Sewell: But in fact I was pleased to see that a number of the recommendations that we'd made about heritage matters in built form did survive in the policy statement. I believe that they require that municipalities, and everybody else, have to pay attention to existing built forms. So I think it's a very good, strong way to proceed. I was quite happy with it.

If I had a copy, I could refer you specifically to the sections of the policy that say that. I know that in terms of our own policy, we made some terrific—thank you. It's in policy B.

Policy B14 says: "Policies and decisions regarding development and infrastructure should conserve significant cultural heritage landscapes and built heritage resources."

Policy B13 says: "Policies and decisions regarding development and infrastructure should conserve significant landscapes, vistas, and ridge-lines."

I think they're very important policies to say: "This idea that we can start all over with nature and reshape or reshape our built heritage, that's wrong. We should be working within it. They should be our constraints." I think those policies will be very helpful to people who are interested in where we've come from and try to shape the future in terms of our past.

I think George wanted to deal with the other.

Mr Penfold: I'll deal with the information and notice and the septic.

Finding ways to legitimately and openly engage people in the planning process is obviously a real challenge. In section 8 of our report we had a number of recommendations to deal with public involvement and participation.

The planning legislation that's in place now requires one public meeting on official plans, plan amendments and changes. One of the significant recommendations that we had, in my view, was that for those kinds of major changes—it gets back to the previous discussion about what's major—there should be a requirement for two public meetings, one at the very beginning of the process where the municipality releases publicly the intent to proceed with the change, outlines the information that it's going to be dealing with, what opportunities there will be for other public involvement between that point in time and reaching a final decision.

We didn't suggest actually prescribing that in the legislation or guidelines, but in fact requiring that the municipality outline that up front. Components of those recommendations are proposed to be dealt with in the regulations under the act so the extent to which they'll be reflected is not clear. So that's how we propose to deal with that.

Notification: We looked at registries, for example, where individuals could say to the municipality, "I simply want to be sent notice of changes in my area or my ward or my section of the community so that I get it directly," as an alternative. Again, whether that will be in the regulations we're not sure.

Septics: There are a number of alternatives that we looked at as part of the background of the commission work. We had one of our newsletter issues specifically on alternatives for standard septic systems. There are alternatives available that are useful in various kind of site conditions. Some are more useful than others. All require some level of maintenance, which gets back to the regular inspection question.

The third question really has to do with a middle range of servicing which is communal in nature, where a number of units could be on a small system of their own. We had recommended that that should be considered for small developments as either publicly owned servicing or as privately owned servicing where there would be some agreement with the municipality.

The technical issue of alternatives: There are some problems there in terms of getting the Ministry of Environment to approve various technical kinds of solutions. The other key question really comes back to management.

Ms Haeck: I appreciate your comments very much. Thank you.

1150

Mr Alvin Curling (Scarborough North): John, it's good to see you. Your comprehensive report here, as you know, will go very far in making many, many changes to how things are being done and resolving some of the problems that we have faced for years. I think it's a bold move on behalf of you and on behalf of the government to do this. But again, as you know, the municipality and developers and individuals have been frustrated for years in having things change. You know that this cannot be done unless the government itself will respond positively to some of the recommendations that you have made.

Of course, you've been in public life long enough, elected life, that you know that not everything that you recommend will come forth, as the minister has said. Some of the recommendations that you have made, and some of them are quite significant, did not appear very much in the legislation, to define very well in the legislation, and you expressed some of your frustration. You hoped that it was there, because it needed strong legislation.

Hence, your committee hangs its hope on the fact that regulations will make their way in defining that. But I want to speak in the sense of an elected individual and an opposition member who has found now that late regulations—sometimes not knowing how to criticize or come forward with some of the legislation here as we go around, it would be said by the government that it will be in regulations.

What emphasis would you like me or my colleagues as we go around the province to emphasize? You talk about some of the areas. As a matter of fact, you mention the four areas: contents of an official plan, planning on a watershed basis, public involvement in plan-making and public notification.

If regulations come long after and there's nothing we can do—many times, you don't even see the regulations because there's a draft regulation and then all of a sudden it becomes law—what strategy would you recommend to

us in emphasizing to the government to bring regulations forward so we can be helpful in making a very, very sound legislation and very good plan?

Mr Sewell: I guess the best thing to do would be to say, "Let's see the regulations before the bill is finally read a third time." But as the minister has indicated, one of the problems with that is that the implementation committee, which is a bunch of interest groups, are trying to sort that out among themselves. But it seems to me that the more you can get an understanding of what those regulations will be and the items they will touch on the better the public interest will be protected in my mind.

Mr Curling: I find this dilemma—and I'm really using your resource here and your knowledge—that the frustration in actually—I don't want to call it "criticizing"—assessing any policy or legislation is that if you don't have the regulation, you feel out there, not making the kind of contribution. I know I'm asking a question that's difficult for you to give some response to.

Mr Sewell: Yes, it's why we suggest it should be in legislation. We thought that's the easy way of dealing with it. Let's just put it down. We realize that it's detail, but there is lots of detail in lots of other regulations.

Mr Eddy: Thank you for your presentation. It's very helpful. My concern is the matter of timing of the various steps of the Planning Act, and it's true, the time consumed in many matters is far too long. It has been pointed out to me that the government's claim to be addressing the need to provide for more time in efficient decision-making is greatly overstated and the bill really isn't a streamlining document. I know there are some time frames tightened up but, overall, what is your view on that? Shouldn't we be addressing that more?

Mr Sewell: I guess I disagree with that criticism. We had suggested three kinds of time frames: one at the municipal level, the second at the provincial and the third at the OMB. What we'd suggested at the municipal level is that municipalities should have three months to do a rezoning—if a decision hadn't been made, then they could go to the OMB and say, "Hey, come on, let's get on with this"—and six months for official plan amendments. Those are both in the legislation. We're pleased with that. We had no quarrel whatsoever on that.

The second area of timing was the time taken to approve things. Now, of course, we've removed the need for provincial approval in many, many instances. We've said, "You just don't need it." Municipalities can do these kinds of things on their own. If people are unhappy, they'll have their own rights.

But what we suggested is that in cases where the province still will have approval power, it's got to make its decision within a six-month period. That was our recommendation. That is in the legislation as well. So we don't have any quarrel with that part of it. People might say six months is too long for an approval body. We thought at the end of the day maybe it's not. That's why we suggested six months.

The third area was at the Ontario Municipal Board, where we'd said the OMB should be asked—I don't think we proposed legislation on it, but we did say the OMB

should be requested to try to have these 30-day hearings, you know, meetings, where you get the parties together to see if it could be resolved.

Mr Eddy: Thirty days?

Mr Sewell: Not a hearing; a meeting of the parties.

Mr Grandmaître: A pre-hearing?

Mr Sewell: Yes, where you sit down and say: "Now, what is the problem? Let's be serious about this. What kind of evidence are you going to be bringing forward?" those kinds of things. We really do believe that the experience the ministry has had and the OMB has had with minor variances will in fact be reflected across the area. With minor variances, I think they're finding that 40% or 50% of them are being settled right at that hearing, at that meeting stage, and a number of the others are falling off the table.

That was our third area of streamlining. I know that the OMB is considering all this and I'm not sure what recent instructions have gone out and how they're looking at it. I think in terms of streamlining, we don't have any quarrel. We're pretty happy. We think that the bill incorporates this idea of streamlining.

As I said, I think the one area where you might question is whether an approval body should have six months. But it was our considered opinion that six months was a reasonable period of time. We thought speeding it up wasn't going to make much sense.

Mr Grandmaître: Two years ago or maybe three years ago, John, the OMB appeared before the government agencies committee. We were told by the then chairperson that what you're proposing today was in fact in place. Did you find out otherwise, that it's not in place, this pre-hearing process?

Mr Sewell: We know that there's been some experimentation at the OMB. They have a couple of mediators who are trying to do it.

Mr Penfold: There have been three pilot areas in the provincial facilitator's office.

Mr Sewell: That's right. Dale Martin is leading a whole new assault on this area and I gather it has been quite successful. So what we were trying to do was saying, "Okay, come on, let's implement it as a regular kind of thing." I know it's being expanded at the moment, because it works. Courts have been doing this for quite some time and finding it works, and we think the OMB could do it.

The Chair: Mr Sewell, we ran out of time. We want to thank you and Mr Penfold for all the good work that you have done and for the presentation that you have made to this committee today.

Mr Sewell: Thank you very much, Mr Chairman. If there's anything we can do to help the committee in its process, we'd be delighted, individually or collectively.

The Chair: Thank you for that.

There are two matters to deal with, first of all, some of the statements that some of the opposition members may want to make. We'd like to do that and then to deal with one small matter once you've done that. Mr Grandmaître, your statement?

Mr Grandmaître: Mr Chair, I'm interested in hearing what people have to say about Bill 163. I think we've asked some very important questions this morning. I'm sure that in the next three weeks, you're going to hear from us. We'll leave it at that.

The Chair: Very well. Thank you.

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Mr McLean: I'd like to put a few questions on the record for the parliamentary assistant to answer. We didn't have much time this morning to ask the minister, but I thought it would be appropriate—

The Chair: Mr McLean, if you're going to pose questions, he won't answer them today. Unless you're going to make statements.

Mr McLean: I'm making a statement and my statement's going to be in the form of some questions. I've done that before and I think it's appropriate that I'm allowed to do it again.

The Chair: Very well. Go ahead.

Mr McLean: I would like to know what cost-benefit analyses has been carried out to measure the impact of this legislation with the municipalities. If they have been done, are they going to be made public? I know that Sewell at OMA the other day was very critical of some of the legislation and I don't think we heard about it all today. I'm wondering what views the parliamentary assistant would have on some of the negative impact that we have heard on that.

The rural municipalities have complained to me about the top-down method of planning and development contained in Bill 163 and we will hear from them during the next two or three weeks. But I'm wondering what flexibility there's going to be there with regard to this government and the parliamentary assistant. I would like him to let me know.

The right of public appeal has been severely restricted in a misguided attempt at streamlining the planning and the development process. The right to appeal is nullified. If you don't file a letter of objection or make an oral presentation before a municipal council decision is made, then why was this done?

I talked about the minor variances this morning with regard to the no chance of appeal. I didn't get a very good explanation of what a minor variance really is, and I would hope that the parliamentary assistant would see that that was placed.

We want to talk just briefly about the policy statements. How definite are they going to be? The legal framework that now exists with the current phrase, as I said this morning, "have regard to," we want to know why that was changed.

I want to know with regard to the policy statements—they are sometimes confusing and contradictory. For example, in policy B, which deals with economic, community development and infrastructure, section 13 says that decisions related to infrastructure should conserve significant landscapes, vistas and ridge-lines. But in policy A, dealing with natural heritage, there's no mention of this subject. How are these two policy elements supposed to work together?

There's no onus on the government in this legislation to deal significantly with the provincially significant areas. A developer could buy land and find out later that it's adjacent to an environmentally sensitive area and they can build on that. The question is, is that fair? I wish your staff would look into that and get back to me.

In policy B, economic, community development and infrastructure, there's hardly anything about economic growth. Most of it deals with intensification. Why wasn't there attention paid to growth and job creation?

Agriculture, natural heritage and community development are now pursued by individual ministries. With Bill 163, the new provincial policies, there will be a cumulative effect on all these areas which could strangle development in rural communities. How will these goals be matched with the ministry's existing policies? Are there going to be several ministries involved, or is it going to be just dealt with by one ministry?

Section D of the policy statements dealing with agriculture leaves no room at all for local decision-making. Permitted uses, severance policy and separation distances are set out without any regard for different regions in Ontario. Why do you take away so much power from rural Ontario?

It's interesting to note when I asked a question today about a septic tank two miles out of Kenora, why would that have to be inspected every five years? I think northern Ontario is really a lot different than southern Ontario.

The conflict-of-interest guidelines: You say they're not tough enough on local politicians. Many of them are just part-time people. It's different—

Mr Pat Hayes (Essex-Kent): Excuse me, who made the statement that they're not strict enough?

Mr McLean: I said they're too strict.

Mr Hayes: I think you made a comment about "you," referring to the government, that they're not strict enough.

Mr McLean: Well, it will come up in Hansard if you don't understand what I said. You will read it in there. You recognize the difference in the changes of the guidelines. That's what I wanted to tell you.

"The Ministry of Housing uses the Planning Act as an instrument to force higher levels of affordable housing on new developments where possible. Low-income housing is not a planning matter. It should be removed from these reforms." I'm wondering if that is your intent, to do so.

The final one I have is "The policy stipulates that the building materials and the transportation of these materials should be conserved where feasible through reuse, recycling and renovation." That doesn't belong in planning and should be removed from it.

I am looking forward to the opportunity to listen to some of the comments from some of the municipal people with regard to these very issues, and some of those questions I would hope that your staff would be able to clarify as we go along.

The Chair: Statements from anyone else? Okay. One last matter to deal with. That is, Roberta Jamieson from the Ombudsman's office has called us and would like to

appear before this committee in Toronto on Monday, September 12. I looked at the schedule and it's quite tight, in my view. I'm not sure whether others have a different view. If some of you want to look at that agenda and think that we can squeeze her in to the tight schedule that we have, you might let me know.

Otherwise, what I might suggest is that we ask her to give us a brief and to simply submit it to us for us to consider. We have asked her if she could make it today, because we thought we'd have the time today, and she can't. So we at least made that effort. But unless there's a contrary view, I suggest that we simply ask her, through her office, to send us a brief.

Mr Hayes: Sounds good to me.

The Chair: Is that all right with all of you? Very well. This committee will recess until 1:30 this afternoon.

The committee recessed from 1207 to 1337.

MINISTRY OF MUNICIPAL AFFAIRS

The Chair: I'd like to call the meeting to order. I think we're ready for the technical briefing and would invite Mr Philip McKinstry, Ms Diana Dewar and Mr Dale Martin. Mr Martin is not yet here. Is he coming? Yes. Perhaps we should invite Mr Glenn Johnston anyway to the front, and Mr Peter-John Sidebottom. We'll begin with the three of you who are here, and as the others come, we'll bring them along. Welcome.

Mr Philip McKinstry: Thank you, Mr Chair. My name is Philip McKinstry and I'm the acting director of the municipal planning policy branch in the Ministry of Municipal Affairs. I'd like to take this opportunity to introduce the subject before we move on to the other people.

Bill 163 would amend the Planning Act, the Municipal Act, the Ontario Municipal Board Act and other related legislation. The Local Government Disclosure of Interest Act, which would replace the existing Municipal Conflict of Interest Act, is also included in the bill.

In this first presentation, Diana Dewar and I will highlight the key features related to municipal planning. Glenn Johnston will highlight the key features of provincial planning under the Ontario Planning and Development Act. Dale Martin will then talk about how planning reform is being implemented.

The second presentation, on open local government and local disclosure of interest, will be given by Paul Jones.

I will begin with an overview of the Planning Act changes and the comprehensive set of policy statements.

Bill 163 would amend the current Planning Act. To understand how the whole package would work, it is also necessary to refer to those sections of the act that would not be amended by the bill. The same is true of the Ontario Municipal Board Act. We will be concentrating on the proposed changes from the current legislation.

One major change would be the addition of a "purpose of planning" section to provide greater clarity and direction for decisions made under the act. This section would address the need to foster economic, environmental, cultural, physical and social wellbeing, as well as the need for sustainable development through a planning process

that is fair, open, accessible, accountable, timely and efficient. To achieve this objective, a policy-led system is advocated, where matters of provincial interests are integrated in provincial and local planning decisions and where cooperation and coordination among various interests are achieved.

Section 2 of the act would be revised to expand the list of provincial interests and to require that all planning jurisdictions that make decisions under the Planning Act "shall have regard to" these provincial interests.

Section 3 of the act would be revised to require that decisions of planning authorities under the Planning Act "shall be consistent with" policy statements. "Shall be consistent with" is intended to be stronger than "shall have regard to" but not as strong as "shall conform with." It is intended to provide an effective mechanism for implementing policy while still providing flexibility to recognize local diversity and to permit practical and innovative implementation of the policy.

As the minister mentioned, cabinet has approved a comprehensive set of policy statements that have been released for information purposes. It is intended that they would come in to effect when the legislation is proclaimed. As Dale Martin will explain, implementation guidelines that would be advisory in nature would be released at the same time.

The policy statements themselves are not part of the proposed bill. They are, however, an integral part of planning reform. I will briefly highlight the key features. The policies address six policy areas.

Goal A addresses natural heritage, environment and hazards, and contains three subgoals. The first, natural heritage features and environmental protection, deals with sensitive features which would be protected from development. It includes policies relating to water, natural heritage features/systems and fish habitat, as well as a policy encouraging municipalities to protect the ecosystem. The second includes the existing wetlands policy statement. The third, hazards, deals with lands where development may not be appropriate because site conditions may cause a risk to public health or safety or result in property damage. Included are policies on the Great Lakes-St Lawrence shoreline, erosion, hazardous sites and contaminated sites. The existing floodplain planning policy statement, which deals with riverine flooding, has also been included.

Goal B addresses economic, community development and infrastructure. It includes policies regarding matters such as social and human services planning, economic development, transportation and infrastructure, growth and settlement, development in unorganized territories, natural cultural features and land use compatibility. Some of the policies reflect the transit supportive guideline and the growth and settlement policy guideline.

Goal C, housing, replaces the existing land use planning for housing policy statement.

Goal D, agricultural land, replaces the existing Food Land Guidelines, which were approved by cabinet in 1978.

Goal E, conservation, promotes efficiency of energy

and water use through land use planning. Policies regarding waste reduction and efficient transportation systems are included.

Goal F, mineral aggregate, mineral and petroleum resources, contains two subgoals. The first incorporates the existing mineral aggregate resources policy statement. The second includes policies for mineral and petroleum resources.

Section G addresses implementation and interpretation issues.

As I indicated, the four existing policy statements have been incorporated into and replaced by the new set of provincial policy statements.

When Bill 163 comes into effect, decisions of specified planning authorities regarding land use planning matters under the Planning Act must be consistent with these policy statements.

This comprehensive set of policy statements will be a key component of the new policy-led planning system.

Thank you, Mr Chairman. Now I'll ask Diana Dewar to speak more about the legislative part of it.

Ms Diana Dewar: I am Diana Dewar, manager of the municipal planning policy branch from the Ministry of Municipal Affairs. I'd like to highlight some of the significant legislative features of the new planning process under the three themes of streamlining, local empowerment and environmental protection.

I will begin by describing how the proposed bill will streamline the planning process.

First, I will discuss time frames. The proposed legislation specifies time frames within which decisions must be made. In the current process, there is no time limit to the time for making a decision on official plans or development applications. In the new system, the approval authority would have 150 days for official plan amendments and 180 days for plans of subdivision. Where the approval authority has not made a decision within the specified time frames, the matter could be appealed by the proponent to the Ontario Municipal Board.

What constitutes a complete application would be prescribed by regulation, so that applicants know up front what is required to be submitted. The approval authority could refuse to consider the application until the required information is submitted. The time frame for making a decision would start once the complete application has been received.

Third, I would like to discuss early public involvement in dispute resolution. The new system stresses early public involvement in the process. For example, there would be a 30-day separation between the public meeting and council adoption of a plan. This is intended to encourage the resolution of conflicts before the plan is adopted.

Also, there would only be a 30-day window for requesting referral of an official plan amendment or appealing a decision on a subdivision to the Ontario Municipal Board. The current act provides for referral at any time until a decision is made.

Another important change is that notice of a subdivision application would now have to be given.

I'd like to now discuss dismissal powers. Both the approval authority and the Ontario Municipal Board would have expanded powers to dismiss an appeal or referral if there is no merit to the appeal.

The approval authority and the Ontario Municipal Board could dismiss a matter where reasons do not disclose any apparent land use planning reason, where a request is not made in good faith or is frivolous or vexatious, where the request is made only for the purpose of delay, where the plan is premature, where the person requesting referral did not make oral submissions at a public meeting or did not make written submissions to the council before the plan was adopted or has not provided written reasons for the request. The Ontario Municipal Board could dismiss a matter if the fee had not been paid or a request by the Ontario Municipal Board for further information has not been responded to.

Minor variances would no longer be appealable to the Ontario Municipal Board. Council's decision would be final. This means that the Ontario Municipal Board could concentrate on the larger issues. Council could delegate this authority to a committee of council, committee of adjustment or staff. Municipalities would have the option of establishing a two-step process, with council reviewing the decision of the committee of adjustment if requested to, as long as there is no council member on the committee.

A lapsing provision has been proposed in the bill which would allow approval authorities to put a time limit of not less than two years on a draft-approved plan of subdivision. This would allow municipalities to allocate servicing capacity to developments that are ready to go ahead. The municipality would have the authority to extend draft approval.

Municipalities would now be able to adopt a development permit system for a defined area in a municipality or for the whole municipality and would be able to delegate the issuance of development permits to staff. Development permit areas would be defined in a municipal official plan and be used as an alternative to site-specific zoning bylaw amendments and site plans.

The proposed legislation provides for an optional process. This would allow municipalities to meet the requirements of a class environmental assessment and the Planning Act at the same time. The work that is done in support of an official plan or official plan amendment would also meet the requirements for an infrastructure undertaking. This has significant potential for savings in cost and time.

The bill proposes technical amendments to the Ontario Municipal Board Act which would streamline the administrative practice of the Ontario Municipal Board. For example, the service of notice by fax could now be recognized.

Another important theme of the bill is municipal empowerment. Bill 163 assigns power so that regional governments and cities outside regions would be responsible for subdivision approvals and most regions would be responsible for approving official plans and official plan amendments of local municipalities.

One of the technical amendments the minister mentioned this morning would be to provide for further delegation of subdivision approval from the region to a local municipality. Separated cities and cities in northern Ontario would be assigned the authority to approve plans of subdivision.

The legislation itself would not automatically assign power to counties. This recognizes local diversity and the various levels of planning in counties. Authority could be delegated. It is intended that once a county has an approved official plan, authority to approve development applications would be delegated.

Planning boards would now have the power to zone lands in unorganized areas. Provision is in the proposed legislation which would allow the minister to deem an existing zoning order to be a zoning bylaw.

1350

A new section is proposed to be added to the act to provide for the establishment of municipal planning authorities. This would allow councils of two or more municipalities in one or more counties to establish a municipal planning authority.

In some areas county planning is difficult because of the configuration of the county boundaries and population distribution. This would allow municipalities with similar issues and growth pressures to plan together. Minister's approval would be required. There are a number of considerations to be taken into account, for example, the continued viability of county planning.

The new system would require that official plans be prepared in regions, separated municipalities, cities in northern Ontario, planning boards and municipal planning authorities. Counties would be required to prepare an official plan, but the timing of this would be prescribed by regulation. Recognizing the diversity of county planning, the legislation would provide for phasing in the requirement for counties to plan.

The third important theme is environmental protection and there are a number of legislative provisions in the bill to further this theme. As Philip McKinstry has described, there exists a clear set of comprehensive policy statements which put forward clear provincial policies regarding the environment. Bill 163 would require that all decisions under the Planning Act "shall be consistent with the policy statements."

The minimum content of official plans would be prescribed in regulation. This regulation would include many environmental matters.

Also within the theme of environmental protection, amendments are proposed to the Municipal Act to allow municipalities to regulate the dumping of fill and lot grading.

There is an amendment proposed to the zoning provisions which would permit municipalities to prohibit development on land within areas such as significant wildlife habitats, woodlands, wetlands, contaminated sites and sites containing significant archaeological resources.

I would now like to turn it over to Glenn Johnston.

Mr Glenn Johnston: Good day, I am Glenn Johnston, manager, provincial planning policy branch of the Minis-

try of Municipal Affairs. At this time I wish to provide a statement on the Ontario Planning and Development Act component of Bill 163.

The Ontario Planning and Development Act was first enacted in 1973. It was conceived as an important provincial planning tool that would enable the province to set policies and create plans for geographic areas of the province. The purpose of these plans was to establish policies for the economic, social and physical development of a specific area.

Under the new act plans could include policies for the distribution and density of population, parkland, water resources, environment, servicing, communication and transportation systems, educational, cultural, recreational, health and other social facilities and for the coordination of planning and development among municipalities or planning boards. These plans would be developed by the province based on the location of existing or anticipated provincial interests requiring planning and protection.

Planning reform seeks to empower municipalities to make planning decisions, to help protect the environment and to streamline the municipal and provincial planning processes within a policy-led system. The Commission on Planning and Development Reform recognized the need for the province to lead with policy such as those in the provincial policy statements and area plans as already provided under section 3 of the Planning Act.

Another method that can be employed to provide policy direction, especially for unique areas with significant provincial interests, would be the use of provincial development plans created in accordance with the Ontario Planning and Development Act, the OPDA.

The original OPDA was created 20 years ago, but its cumbersome processes and other shortcomings discouraged its use to address either current or future provincial concerns and opportunities. The proposed OPDA revisions would streamline the processes in the act and strengthen public participation in those processes.

Bill 163 would replace the original OPDA with a new act of the same name. The purpose of the act would remain the same, but experience with creating and amending a provincial plan under the existing act has shown where streamlining of the processes is necessary.

The province used the OPDA and the Parkway Belt Planning and Development Act when creating the parkway belt west plan in 1978. The parkway belt west plan was designed to protect a corridor of land stretching from Highway 48 in Markham to the Niagara Escarpment in Hamilton-Wentworth. It is comprised of approximately 50,000 acres to be used for highway, hydro, utility and other infrastructure corridors, and for open space and such other uses as complementary residential development.

A major reason why Highway 407 is now rapidly being built is because a transportation corridor and related policies were part of the 1978 parkway belt west plan. Markham Centre can proceed with its innovative design on a tract of land some 1,100 acres in size because the lands had been included in the parkway belt reserve. A number of corridors and facilities important to the rapid

growth of the greater Toronto area would not have developed quickly and with minimal disruption to other services and adjacent developments without the existence of the parkway belt west plan and the Ontario Planning and Development Act.

There are several significant changes in the OPDA that make it good news for planning in Ontario. One of the most significant changes pertains to improving the processes for creating and amending provincial development plans. Under the original OPDA, the same complex process for creating a major new plan was also used to make even the most insignificant change in a plan. Under the new act, the process for creating a plan would be different from the one for amendments and both processes would be more streamlined and flexible than in the original legislation.

The current OPDA requires two mandatory committees be used relatively late in the plan creation and amendment process. Under the proposed OPDA, the minister would be required to ensure that the public is given an opportunity to participate in the preparation of the proposed development plan. Methods that could be used to encourage public participation may include committees, focus groups, public meetings, workshops or any combination that would be appropriate to the circumstances. Similarly, these methods could be employed in the amendment of a plan.

In the case where there are no concerns or objections with a proposed amendment, the minister would be able to forgo a hearing. It would save time and money.

The minister would also have approval authority for amendments to the plan after consulting with other ministries, municipalities and the public.

Under the new OPDA, the existing Parkway Belt Planning and Development Act would be repealed and existing amendments and regulations would be provided for in the revised OPDA. Many of the over 50 outstanding parkway belt west plan amendments would benefit from the streamlined processes which will provide for their speedy resolution.

The key changes to the OPDA in the revised legislation would make the act a more viable provincial planning tool. The processes would be streamlined and more user-friendly, the creation of development plans would become more accessible to the public, amendment approvals would be made easier and quicker and more cost-effective, and the parkway belt west plan would benefit from all these changes. Thank you.

At this time I would like to introduce Dale Martin, who will speak on how planning reform is going to be implemented.

Mr Dale Martin: Mr Chairman, I apologize for being late. My schedule and your schedule don't seem to coincide for some reason. Mine is obviously out of date.

I would actually like to make a contribution to the committee's consideration in three ways. One of them I'll speak to, as has been mentioned, is implementation of the package, but I also want to bring the committee up to date on some of the work that my office has been doing that comfortably fits with the work of the commission

and the recommendations that you find before you legislatively, and hopefully set something of a context for the members in the course of their deliberations. They see the legislative piece as a part of a number of other initiatives that necessarily fit together if we hope to be successful in transforming the planning system in the province.

The first thing I want to talk to is what has been going on over the last year in my office aimed at planning reform. About a year ago, really two years ago, shortly after I was appointed, I along with the development industry sponsored a series of seminars across the province that we called Building on Success seminars.

The first series of 12 were specifically with the Urban Development Institute and Ontario Home Builders' Association. Then this last year we sponsored another series of 12 with regional governments and county governments across the province. It was a fairly straightforward day-long proposition of sitting provincial review and approval people down, senior people, together with representatives of either regional and local government or the development industry, to talk about one another's practice and ways that we can improve the way planning is done in the province.

1400

I think you'll find that many of the suggestions that came out of those Building on Success meetings are either in the legislation or in the section 3 policy statements or are found in some of the implementation proposals that I'll speak to in a minute.

We've had 24 meetings around the province that are regionally based, and out of those meetings a lot of good suggestions. Some of them needed the legislative change; some of them are administrative in their nature.

In addition to that we've engaged in a series of pilot projects over the last year and many of them suggested the direction that we should be moving in with respect to planning reform. I want to speak a bit to some of those projects.

The first set of pilots that we have been running for the past year were mediation pilots in four communities in Ontario: one in Nepean, one in Kitchener, one in the city of Toronto, and subsequent to those being launched, we added one other one in Cambridge. The intent was to look at what would happen if you offered mediation services to objectors to the Ontario Municipal Board.

There had been a lot of talk for a number of years about the benefit of that approach and I think everybody who's in the planning process has a strong preference to get away from the adversarial tribunal resolution of conflict and into other alternative ways of managing disputes.

Not surprisingly, in the same way that the Ontario Municipal Board did in its mediation services, we too found that there's potential, and in fact the success rate was somewhere around 85% for the objections that were seen as mediatable objections.

Initially the bulk of those were aimed at resolving minor variance concerns, but subsequently we became more ambitious and tried more complicated zoning bylaw objections with more than one party. But I think the main message coming out of the pilot was tremendous poten-

tial. We then had a conference that was cosponsored by a quite a range of different organizations, including the development industry, the bar, professional planners, municipalities and the environmental movement, to explore the whole issue of mediation and land use planning.

Out of that conference was the suggestion that land use planning, more than simply being a Band-Aid that you'd sort of tack on to the land use planning process, should move central to planning in the province and we should look at every conceivable opportunity to introduce a non-adversarial, mediation-type approach to conflict resolution in the land use planning system.

I think you'll find in the legislation itself a reference to that. I know that some people don't think the reference is strong enough and I'm sure that we'd be interested in hearing from this committee on ways that it thinks that non-adversarial approaches to resolving conflict in land use planning can be brought. But I should say that the pilots were run, they were successful, they were enthusiastically endorsed by municipalities and, for the most part, the administration of them was voluntarily given by the municipalities involved.

The second thing that area pilots got involved in was consolidation of decision-making within the provincial government, essentially trying to develop an agreement between Municipal Affairs and the Ministry of Environment that would allow Municipal Affairs review people to make decisions on behalf of the Ministry of Environment on routine matters. That we saw as a key way of reducing the amount of time that an application spent in the system. Again, I think that all of the participants in those pilots—the main ones ran in the greater Toronto area—agree that they hold tremendous potential as a way of expediting land use approvals, certainly with routine applications.

A third area that we worked fairly strenuously at was the idea of delegation and transfer of review functions from the province to other administrative bodies involved in land use planning. This was an attempt to eliminate what is seen as the duplication in review. In water-related matters, you often have four or five agencies—conservation authority, health unit, a couple of ministries and often a municipal government—that are involved in reviewing for more or less the same thing. A slightly different spin, but it's totally possible, we think, to consolidate that review in one location.

One of the pilots, probably the most successful in this respect, is going on now in Cambridge with the Ministry of Natural Resources and the Grand River Conservation Authority, where the Grand River Conservation Authority is, through agreement, performing a review function for water-related matters, again something we think has tremendous potential to improve the delivery of service to people in the land use planning process, eliminate duplication and improve efficiency.

We have had three or four pilots over the last year that all point in a very specific and positive direction for change in land use planning. The legislative proposals and the policy statements and those sort of administrative changes all fit together, I think, in a reasonably neat package that we have to extend from individual pilots to

a province-wide approach to land use planning.

The reason I wanted to indicate that was not only as a way of providing a broader context for the committee's consideration, but also because I think one of the underlying objectives that needs to be achieved if this overall change in the way we do land use planning is to be achieved is a fundamental change in the personality of the system. We've gone again from looking at mediation, for example, as a minor event to a major event in land use planning.

What I mean by changing the personality of the system is really in two or three ways. There is now growing agreement that we have to fundamentally move away from an adversarial approach to resolution to a non-adversarial approach, a more partnered approach to planning our communities.

As you all know, almost everybody in the system now, the way the system is set up, starts thinking about going to the board the moment they hear about an application for development in their community. That simply isn't a good way of doing planning, and I think the intention of many of the changes as proposed in the legislation is aimed at doing just that, getting more of the planning action to occur earlier in the system and certainly in a more non-adversarial way.

The other important personality shift really speaks directly to the province's role but probably also involves regional governments and other municipal governments. That is, first of all, a more customer service-oriented approach, not a policing review approach, and implicated in that, much more provincial involvement early on in the planning process so that people understand what the province's interest is early on rather than finding out after a municipal council has adopted a bylaw or an official plan that the province's Ministry of Environment or Natural Resources or Municipal Affairs objects in one way or another to their proposal because it doesn't fit provincial policy interests.

The idea is to move the province's resources to the front end so that they are engaged with communities and municipalities early on in understanding and articulating the province's interests and so as to avoid subsequently disputes that emerge between the province and municipalities.

So personality shift in two ways: Tilt the system forward, get involved earlier, pre-consultation, that sort of thing, and secondly, a much less adversarial system, one that's loaded up with opportunities for people to describe their concerns early and have them addressed early as a way of avoiding the tribunal as the ultimate resolution of planning matters and planning for communities.

With those two things, I want to now lead to the third issue, and that is the implementation task force that I chair and some of the approaches we hope to achieve with respect to implementation. This, I think, again flows comfortably out of our experience over the last couple of years, our experience in Building on Success, the wisdom of bringing all the parties together to figure out together how best to plan our communities in the province.

We have created, as you probably know, an implemen-

tation task force and I think there's a handout that has gone around that lists three committees, and I'll speak to all three of them.

We thought early on that there are two or three areas of implementation that are not normally handled all that well by government. One of them is the development of the sort of instructive guidelines: How do you actually achieve the policy interest that is described in a section 3 policy statement and how do you do it in a consistent way across the province? How do you know that everyone's reading the same policies in more or less the same way and trying to adapt their planning situation to hit the provincial policy interest?

One of the complaints that was legion across the province is the fact that the province has historically been fairly inconsistent in its application of policy from one part of the province to the next, from one district office to the next.

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We thought the way to avoid that was by developing together the guidelines that we all agree represent a collective understanding of the interpretation of the policies, and that is the first work of the implementation advisory task force. It is meeting monthly. It started meeting half-days; it's now beginning to meet full days once a month, and will meet as frequently as we need to get the job done. But the task force is reviewing in detail all of the guidelines proposed by ministries that would relate to the section 3 policy statements that were adopted by cabinet.

It has been, I think, to everybody involved a very useful and instructive process to date. The one consensus that was reached by the committee was that they do not want prescriptive guidelines. They don't want to be told how to do things. They want to have instructive guidelines. They want to have some suggestions as to how that particular policy is being successfully implemented in this or that community, and we have lots of opportunities to do that across the province. So the first work of this task force for the next few months is going to be around the guidelines and coming to an agreement on what sorts of guidelines will be published associated with those policy statements.

The next thing that the committee has agreed, through its adoption of its terms of reference and work plan, that it's going to concentrate on, although it's already beginning in a minor way now, is the education and training packages that would be associated with the new planning regime.

There's a strong feeling that education and training has not been as systematically and comprehensively pursued in planning as it needs to be, and as a result, all of the participants in the system are very different in terms of their understanding of how the system functions, the policies and their levels of sophistication. Our view is that we need to have sustained education and training in order to expect a good product at the end, an improved planning system.

We expect that, unlike the usual circumstance where you do a bunch of education and training at the beginning

and then let it fall off, in this case we'll end up with education and training as an ongoing and living part of land use planning. In fact one of the things we did last year in my office was develop three or four core curriculums for the consulting industry in key areas of planning. The industry welcomed that.

We just think that it's something that should not only be available to the industry, but should be available to the general public, to municipalities, to the Ontario Municipal Board and to provincial employees that do a plan review and approval. Everyone should be singing from the same songbook, have the same understanding and have the same education and training packages available. The next thing that the committee, the task force is going to be preoccupied with is education and training.

Beyond that, the committee has agreed to remain together for at least a year after the new planning regime takes effect in order to act as a place for people to bring their concerns and to manage any midcourse corrections that are needed in the system.

Trying to keep our eye on the ball of the product, a better planning system that produces better communities in the province of Ontario, again we think this is a rather novel approach in that for the first time people will have a place to bring their concerns as they experience the new regime in process and there'll be a place to air issues and come up with solutions if there are solutions needed.

Those remain at this point the three identified terms of reference and work plan for the implementation advisory task force. As you can see, the task force is evenly divided between the municipal sector, the environmental sector and the development sector. While there are named individuals representing those sectors, we allow specialists to sit at the table in substitution for one of these individuals in the event that there's a guideline or issue that they need to have specialist recommendations available to.

In addition to that, we've created two other committees, one a technical committee made up of planners and lawyers and others who are the day-to-day workers on planning matters in the province and who can give us specific technical advice around the guidelines and around the implementation of the new planning regime.

Finally, we've created a table we're calling the rural table. There's an acknowledgement that by and large planning in the province has been oriented to urban areas, understandably, and to areas where development pressure is the greatest, and so often planning regimes speak more directly to urban areas and fast-growth areas in particular than to other parts of the province.

We think it would be very useful, and in fact the rural table has met and agrees it's very useful, to spend a lot of time looking at how the planning regime could operate best in rural Ontario, potential problems that rural Ontario may face that need to be addressed and concerns that need to be dealt with in the course of setting up this new regime. That rural table is, as you see, listed fairly completely, covers just about all aspects of rural Ontario.

The plan at this point is to have both the rural table and the technical table report ultimately to the task force

and to the deputy ministers' committee responsible for overseeing the overall implementation of this planning reform initiative.

Finally, if you look at the very back, there is a sheet that could make your eyes roll, but it's a fairly conventional table that demonstrates the relationships that we're trying to achieve with respect to implementation.

It takes the external stream that I've just spoken to—the task force on implementation, the technical committee and the rural table—associates it with the deputies' committee—that's a province-wide committee that includes all those ministries that have anything to do with land use planning—and then finally within Municipal Affairs itself, the lead ministry, a transformation committee aimed at, among other things, transforming the culture and the behaviour of land use planning review and approval agents in the ministry but also making sure that all of the ministry are up to speed on the implications of planning reform and are ready and able, when planning reform is fully implemented, to meet the challenge of a new process.

I think that may be adequate remarks. I'm certainly happy, along with everybody else here, to entertain any questions and bring any other information. If committee members are interested in more detail on any of this, obviously we're prepared to make that information available.

The Chair: Very good. I'm assuming we're not hearing from anyone else. Correct?

Mr McKinstry: There is one more presentation, but that is on the open local government part of the package from Paul Jones.

The Chair: I'd prefer that we did this now, and then we'll take questions of all of you after that.

Mr McKinstry: Yes, I agree.

The Chair: Can we just fit him in? Mr Jones.

Mr Paul Jones: My name is Paul Jones. I'm manager of local government policy at the Ministry of Municipal Affairs. For the information of committee members, in your committee binder there is a tab 11 that contains several appendices. Included with that is a table of contents, and the green pages within tab 11 refer to the open local government provisions that are contained within Bill 163. There are a number of charts and other information that you may want to make reference to during your deliberations.

The open local government component of Bill 163 is the result of extensive consultation over the past four years. It is a package which strives to balance the privacy rights of members with the public's right to know. There are three parts to open local government. They are open meetings, disposal of real property and local government disclosure of interest, formerly known as municipal conflict of interest.

The changes proposed are designed to ensure that local government decisions are made in an open and accountable manner and that the public has access to that process and to the information that they require to hold the local government process and their representatives accountable for the decisions that are made.

The open meeting provisions in Bill 163 would replace the Municipal Act section 55. The new provisions would apply to municipal councils, committees of councils or similar entities and local boards as defined in the Municipal Affairs Act, which includes bodies such as public utility commissions, planning boards and boards of health.

The open meeting provisions of Bill 163 would not apply to the following, as they have their own specific legislation: police services boards, library boards and school boards.

The current legislation concerning open meetings requires only that regular meetings of council be open. All other types of meetings, whether they be special, committee of the whole, standing committee and so on, may be closed at the council's or local board's discretion, regardless of the topic under consideration.

Bill 163 would change the criteria for permitting the holding of a meeting in the absence of the public from a scheme based on the type of meeting to a system based on the subject-matter under consideration.

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Bill 163 would permit a council or local board to discuss a limited number of topics in the absence of the public. Some are already incorporated into municipal practices or procedural bylaws. The topics most often would include security of property; personal matters about an identifiable individual that would possibly include employees; property acquisition; labour relations or employee negotiations; litigation; receipt of advice from a solicitor; and any topic for which the province or federal legislation requires a closed meeting.

While a meeting may be closed for the discussion of one of these topics, no votes may be taken during a closed session. In addition to these discretionary exemptions, a council or local board would be required to close a meeting to discuss a request under the Municipal Freedom of Information and Protection of Privacy Act where the council or board is the head of the institution for the purposes of that act.

If a council or local board wishes to close a meeting or a portion of a meeting, they would be required to pass a resolution during an open meeting indicating the general nature or reason for the closing.

In addition to these requirements for the conduct of meetings, all councils and local boards would be required to pass procedural bylaws outlining the method for calling, conducting and governing the proceedings for a meeting.

The disposal of real property provisions in Bill 163 would replace the current provisions in section 193 of the Municipal Act. The new section would set out the manner by which councils and local boards could dispose of surplus real property.

The Municipal Act provides local governments with a large degree of discretion as to the manner in which they dispose of real property. The provisions regarding the disposal of property in Bill 163 would affect municipal councils and those local boards as defined in the Municipal Affairs Act that have the right to acquire and dispose

of real property. The exception to the list would be school boards, because school boards have their own legislation and regulations.

In addition to disposing of property in an open process, municipalities and local boards would be required to establish and maintain a register of properties owned by the municipality or local board.

A regulation is proposed that would permit a municipality or board to exempt certain types of properties, such as roadways, from the register.

Municipalities and boards would also be required to pass a bylaw establishing procedures for the sale of property. This bylaw is to include notice provisions and may provide for different procedures for different classes of property.

When a municipality or local board wishes to sell property, there are a number of procedural steps described in Bill 163. The council or local board would be required to declare the land surplus to their needs at a public meeting, obtain at least one appraisal of the value of the property and provide notice of the sale of the property.

The Minister of Municipal Affairs would by regulation be permitted to describe certain types of properties and certain types of property transactions that could be exempted from the appraisal requirement. It should be noted, however, that nothing in Bill 163 would limit the current right of a municipality to determine the final price, or other considerations, for which surplus property is to be sold.

Schedule B to Bill 163 would revise the Municipal Conflict of Interest Act and rename it the Local Government Disclosure of Interest Act. Many of the provisions in the current act would be carried over into this new act, including the coverage of the act which includes municipalities, school boards and other local boards, of which there are 15 or 20 different types.

Bill 163 would impose a number of duties on a member. Each member would, as at present, be required to orally disclose their pecuniary interests in matters before the council or board. The members would also be prohibited from accepting any gifts or benefits associated with their office or duties except those of a social or protocol nature. The bill would prohibit a member from using or disclosing information that is not publicly available and that would further their own or another person's pecuniary interests.

Members of a council, school board, public utility or police village, in addition to the duties described above, would be required within 60 days of election or appointment to office to file a financial information statement. The statement would contain a description of certain assets, liabilities and sources of income and financial interests of the member, the member's spouse and minor children and any companies controlled by any of them.

Under the current Municipal Conflict of Interest Act, a member is required to orally disclose their pecuniary interests in matters before the council or board. This obligation would be continued, albeit amended, under the proposed legislation. It should be noted that a member's

pecuniary interests include their direct interests, their indirect interests arising, for example, from employment or other association and their deemed or family interests, which are the interests of their spouse and minor children.

Once a member determines that they have a pecuniary interest in a matter and it does not fall within any of the exemptions provided in the act, a member would be required to orally disclose the interest at the meeting, indicating the general nature, and the clerk or local board secretary would record this disclosure in the minutes. This is a current requirement. They are to make no attempt to influence the decision at any time, including any attempt to influence employees of the municipality or local board. That is a current provision as well.

What is new is the proposal that they be required to leave the meeting prior to the discussion of the issue and not return until the matter has been dealt with and to complete and file with the clerk or secretary a written disclosure of pecuniary interest that follows up on their oral disclosure and outlines the general nature of the interest. These written disclosures would be maintained in a register that would be open to the public.

If a member is absent from a meeting when an item is discussed, they would, at the next meeting they attend, orally disclose the general nature of their interest and file this written disclosure statement.

Bill 163 would prohibit a member from, directly or indirectly, accepting any gift or benefit that is related to the performance of their duties. Exempted from this prohibition would be the acceptance of gifts or benefits of a social or protocol nature.

A member accepting such a gift or a benefit or a series of gifts from the same source would be required to disclose the receipt of the gift if it exceeds a prescribed dollar value. The prescribed limit would be established by regulation. The information to be disclosed would include the nature of the gift, its source and the circumstances under which it was given or accepted. A municipality would have additional authority to establish a dollar value set below the regulation.

The member's written disclosure would be filed with the clerk or secretary of the board and these disclosure statements would be maintained and open to the public.

Members of councils, school boards, public utility commissions and police villages, groups that are for the most part elected to office, would under Bill 163 be required to file a financial information statement. The statement would contain a description of certain assets, liabilities and sources of income. This statement would include the interests of the member, the member's spouse and minor children, as well as any companies controlled by them.

A regulation power is provided that would permit the details of matters to be described in the statement to be established by regulation. A draft financial disclosure form was circulated to all municipalities and local boards in June, and it's included in your information binders. Included in that form was the provision that no member would be required to disclose the value of the interest and

that only those interests with a value exceeding \$2,500 would be required to be disclosed.

The matters proposed for disclosure are described in the regulation and include property interests, business interests, liabilities related to the property and business interests, sources of income from employment and public service.

While a member would be required to disclose the interests of their spouse and minor children, they would do so as if they were their own. They would not have to identify an asset or liability as being that of a spouse or minor child, or even identify their spouse or minor child by name.

A member would also be able to apply to the commissioner proposed under this act to exempt an item from their statement if they felt there existed the possibility of harm to a person or business if disclosure was made.

The person would be required to file a statement within 60 days of election or appointment and update it annually in December of each year, except an election year. These disclosure statements, as with all other disclosure statements proposed under this act, would be maintained in a register that would be open to the public.

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It should be noted that an amendment is being considered that would require the register to be maintained for the member's term of office plus two years. This would be consistent with the limitation period for bringing in action under the legislation.

By virtue of their office, members of councils and boards are privy to information that is not otherwise available to the public. By using this information they may realize a pecuniary benefit. Bill 163 would require that a member not use or disclose information not available to the public that would further their own or another's pecuniary interest. Contraventions would be offences under the Provincial Offences Act and subject to a fine of up to \$5,000.

The enforcement process proposed in open local government is quite different from the existing Municipal Conflict of Interest Act. Bill 163 would establish the position of local government disclosure of interest commissioner, and the commissioner would have the responsibility to investigate contraventions of the act and bring action to the courts where appropriate.

Any person would be permitted to apply in writing within a limitation period to the commissioner requesting an investigation. The person requesting the investigation would be required to provide sufficient reason, be required to pay an application fee, and that amount is yet to be established and would be done by the commissioner.

The commissioner would be required to complete the investigation within 180 days, and could apply to the court for a determination as to whether a contravention has taken place and advise the applicant whether or not the commissioner would be proceeding. If the commissioner advises that the commissioner will not be proceeding, then the applicant would be able to bring action at his or her own expense.

Penalties for contraventions of the act would also be revised. A member that is found to have contravened would, under Bill 163, be suspended without pay or benefits for a period of not more than 90 days. If members are suspended, they are not able to participate in any meeting of the council or local board to which they are members or meetings of other councils or boards they sit on as a result of being members of the originating body.

In addition, the courts would be able to declare a seat vacant, they could disqualify a member for a number of years not exceeding seven, and in instances where the contravention resulted in personal financial gain, they could require restitution.

The current "saving" provisions of error in judgement and inadvertence will be removed from the legislation. In addition to the commissioner's role in enforcement, the commissioner would have responsibilities in the area of education and training and in applications for quorum reduction or relief.

Regulation-making powers would be available to the Lieutenant Governor and to the Minister of Municipal Affairs. Proposals for regulations, many of which already have been provided in draft form to AMO as part of the ministry's ongoing consultation, are included in your committee books.

The proposals would cover such matters as the financial information to be disclosed, dollar value for gifts to be disclosed, rules for application to the commissioner, duties of the commissioner, forms required under the act and other entities to be covered by the act.

I would be pleased to answer, as would all of my colleagues, any questions you may have.

The Chair: Thank you very much. We have 19 minutes per caucus. I'll start with the government members, Ms Haeck to begin.

Ms Haeck: I want to thank you all for coming before us and giving us a very full presentation. I would like at this point to ask Mr Johnston, with regard to his presentation on page 2, something that is very much important to my constituents. At the very top you refer to significant provincial interests, and definitely that is a big concern for my constituency, Niagara-on-the-Lake. Could you expand on that provision?

Mr Johnston: As I understand your question, you question the areas that could be of provincial interest?

Ms Haeck: Yes.

Mr Johnston: I'll give you an example. The experience before with the parkway belt was a combination of transportation, open space, power generation etc that were incorporated into one plan. There were recreational and cultural aspects as well. Each one of those was of provincial significance and all of them are combined into a specific plan. Under the Ontario Planning and Development Act, you could theoretically develop a plan that had fewer aspects of provincial interest or more aspects of provincial interest. There's no limitations in the legislation as to what the plan can address.

Ms Haeck: Let me pursue this just a minute longer. You have a community like Niagara-on-the-Lake. It has in some instances heritage that goes back beyond the War

of 1812. It has the escarpment, it has the Niagara parkway, it has the tender fruit lands, it has a range of rather unique features, and I guess the question that my residents have been putting to me over the last four years is how to ensure that some of these rather unique characteristics are preserved over the long term in the face of, obviously, some development pressures that have occurred in fairly recent memory. How would one frame this?

Mr Johnston: In theory, in fact you could have a provincial development plan for an area that has all those features that you just related to me. The government of the day would have to give directions with regard to defining a planning area and undertaking research for the determination of the scale of those developments, the areas that would have to be within the plan and the policies and restrictions that would be part of that plan.

Ms Haeck: Rather than taking up more of my colleagues' time, I think you and I should have a chat after this has adjourned. Thank you very much.

Mr Wiseman: I have a number of questions. Could you define "frivolous and vexatious" for me?

Mr Grandmaître: Minor variance.

Mr Wiseman: That was part of the next one.

Ms Dewar: I guess I'd have to ask our legal staff if perhaps they can refer us to some case law that has dealt with "frivolous and vexatious." The existing legislation also has a provision in there for a request for referral to be refused if it is frivolous and vexatious, and that essentially means that there is no planning merit to the request for referral. That is continued in the bill.

Mr Wiseman: One of the complaints that I've read in one of the deputations that has been written in is that they believe that the phrase—that comment you've just made will restrict the individual's community right to participate in the process if they happen to miss the date or miss the time period within which they can make presentations.

The other thing is that within the planning process in communities, only a certain area will be mailed the information about changes. I think that's a concern that a number of people are going to be raising, that in fact their public rights to participate in the process will be reduced.

Ms Dewar: Just to answer your first question about the 30-day time period between the public meeting and the adoption of the plan, that is intended to encourage early public participation. As Mr Martin explained, the new planning process is intended to encourage public involvement up front in the process, and that is essentially why that's in there. It's a discretionary power. The approval authority or the municipal board don't need to exercise that power if they feel there is some merit to the appeal or the request.

Mr Wiseman: These are going very well. Thank you.

I have another question. You were all excited about official plans and the degree to which you see these official plans as being the answer to a lot of questions. I don't share your enthusiasm for official plans because I don't happen to feel that they're worth the paper that they're written on. The reason for that is that Durham

region has just had an official plan approved by the Ministry of Municipal Affairs and already has three official plan amendments. These are not insignificant plan amendments.

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My understanding of an official plan was that it was kind of like a document that took into account the transportation and land use and social factors and a whole variety of community things. All of a sudden, within two months after an official plan has been approved by your ministry, by the Ministry of Municipal Affairs, there's Durham region asking for significant change from residential to industrial-commercial.

How can they do that without having to go through and redo their whole official plan, because in my opinion of official plans, it's supposed to be some kind of a balanced ecosystem, sustainable development, biological document that, if you change one part of it, you put the whole thing out of balance, and now we've got three official plan amendments from Durham region. I don't share your enthusiasm for official plans.

Ms Dewar: Well, the official plan process does allow for amendments to it.

Mr Wiseman: Why?

Ms Dewar: You referred to a change in designation, and that is certainly an appropriate situation to amend an official plan. The official plan sets goals and policies for protection of features and explains what the municipality's intentions are for accommodating growth and development in the municipality.

Mr Wiseman: But if they've said that for this one reason, for reasons of balance and sustainability, it's going to be industrial-commercial, and then all of a sudden they turn around and say, "We want to change it now to residential," does that not change the whole organic nature of an official plan and does that not then say that maybe the whole official plan should be done over again just to make sure that the balance and the sustainability are maintained?

I have some real difficulty with official plans that can be so readily changed. I also have a little bit of difficulty removing through sort of big definitions like—what was the other one?—you know, the difference in the definition between "shall be consistent with" being changed from "shall have regard to" but not as strong as "shall conform with." Through the wording in the use of the English language, are we opening up loopholes here that Mack trucks can be driven through into what used to be residential communities on official plans?

Mr Martin: Just having had a career or a former career in municipal politics, I think that there's a very tricky balance, and I don't think there's any instant answer to it. But between local decision-making and ability of a local community to define its own future and articulate a vision, and provincial policy interest within that context—I mean, you probably don't dislike official plans. You may just dislike the ease with which they're amended. The idea of planning a community is an important idea.

Mr Wiseman: If it's planned.

Mr Martin: What we have is a process that allows local governments who are democratically elected to amend their own vision of their own community, and if you don't like it, there is a process for objecting to it and trying to get at it. But short of the province substituting itself for municipalities, I'm not sure that there is a better way of doing it than this kind of balance.

Mr Wiseman: No, I think what residents are asking for is an assurance that what's in the official plan and what has been zoned is in fact what's going to be behind them when they take possession of their house or their property and that developers aren't going to come along year after year and ask for something that is not in the official plan or in the site plan or even in the local community plan.

Then to go to the Ontario Municipal Board, which, even if the council is totally opposed to it, to have it overthrown at the municipal board and all of a sudden there's this development that nobody in the community wanted, yet somebody at the municipal board has turned around and imposed it. That happens if the official plan is degraded in terms of the values that are being placed, if it's easily amended.

Mr Martin: It is absolutely true that if there's an official plan amendment, it should be consistent with the overall vision of an official plan. There's no doubt about it. I presume there will be as many opinions on whether that happens as there are individuals in a community often. But it's an irresistible fact that someone has to make a decision, and you then have a process that allows people to try to evaluate the decision in its wisdom. I mean, as many bad official plan amendments, I guess, as we can identify, we can probably also identify good ones.

I think it's very difficult because there is at the same time a tremendous amount of resistance to rigidity in the planning process and a tremendous amount of resistance to the province imposing a view of a community. There's a tremendous interest in local communities in articulating a vision of their own. So there's a balance that is not easy to strike but is, I think, attempted through this process.

The Chair: Mr Wiseman, just as a reminder, there are other members who want to ask questions.

Mr Wiseman: Yes, this is the last one, as I've already indicated. What does it say to the integrity of the process if within three or four months of an official plan being approved, there are now three major official plans?

Mr Martin: I don't know the facts, but I can tell you that if you look at the changes that are being proposed, they are, first of all, to have everybody in the system understand what the policy objectives of the province are in the system, make them up front and clear; involve the province earlier on than they're normally involved; allow the public to be and ensure the public is involved earlier on so that their concerns can be dealt with earlier on rather than left to the end and they end up at the board and maybe an unsatisfactory outcome.

The first thrust of this is to do as much locally and sort out as much of the issues locally as you can possibly sort out. I think that's a positive change. I think both the fact

that more people will know the rules of the road and that they will have a chance to make their objections felt earlier is a positive change in addressing the concern you raise. But I wish I knew the facts of these three majors that have now rolled through that don't conform to the Durham plan as adopted three months ago. I presume somebody had a better idea.

Mr Wiseman: They're not fixed. They're going to the Ontario Municipal Board.

Mr Martin: Right. I presume someone thought they had a better idea and the planning department in Durham maybe agreed with them, and the council at Durham and whatever the local municipality was agreed with them, and the OMB now is going to be put to the test on whether they agree with their view that this is consistent with the Durham official plan. But short of that process, which may be imperfect in many ways, I'm not sure what there is to propose, except a very rigid, inflexible provincial involvement in the day-to-day life of municipalities, which is not doable, in my view, or desirable.

Ms Harrington: I do want to thank each one of you for the amount of information you have brought to us. It will take some while to get through it all. I did sit on city council in Niagara Falls and I believe that the planning issues and the planning process is one of the most important and interesting parts of that job as well as important in the terms that we are dealing with it. It was always interesting to see the different interaction between the planning principles and the neighbourhood voices which are usually raised quite loudly.

You talked about a fundamental change in the personality of the system. Now normally at council meetings the mayor will say, "All those in favour of this amendment and all those opposed to this amendment will please raise your hands," and from the very first word of the meeting, there is an adversarial system set up. Are you telling us that that whole planning meeting will look radically different?

Mr Martin: What happens is there will be more that goes on in front of that council decision. I think one of the things that we've realized in the course of all the consultation that's gone on is that all too often a council makes a decision without the complete information available, including what the province's position is, including what the precise neighbourhood objections are and whether there have been attempts to address them.

The intention is to have both a mediation moment or alternative dispute resolution as a part of the ongoing day-to-day life before the council decision, require people to indicate what their concerns are, lodge their objections before the council decision, and have the province and the provincial policy interests available to the participants in the system long before the council's decision, right at the beginning.

What we hope then is that a council will be making a decision not any differently—they'll raise their hand *yea* or *no*—but will have quite a different staff report from a planner. Just to relate my own personal experience to it, I represented downtown Toronto in the middle of the development boom with very sophisticated active communities. It wasn't uncommon—and I can name two or

three examples—to see fairly major developments that came off the shelf in a very unpopular way for a community, but if they were put through a community consultation process and a lot of what represented mediation, to have quite a different project at the end of the day that satisfied both the developer's financial imperatives and the community's interests such that when the decision got to council, it was a different project that was being adopted, some more different than others.

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Nevertheless, those examples of planning that involved active community participation early on, community objections registered early on and a mediation attempt done early on, led to a council decision that was quite different than it would have been if it was just left up to the normal process with an adversarial moment at council. So what we're aiming for is the former and not the convention that has emerged, which is people posturing for the OMB.

Ms Harrington: It might be helpful that the planning meeting procedure not be quite so explicitly adversarial in the wording that is set down.

My other quick question is, have the professional organization of planners across this province been consulted with regard to your training packages and are they on side with this?

Mr Martin: Yes. They are on the technical committee and they will be full participants. We've talked to them quite extensively about training and about using their publication as a vehicle for education and training, which they're agreeing to do. They, through the technical committee, will be involved in the day-to-day development of the education and training packages.

Ms Harrington: Are they excited about it?

Mr Martin: Yes, very.

Mr Grandmaître: As a follow-up to Mr Wiseman's question, will municipalities have an option in reviewing their official plan or will they have to review their official plan every five years?

Ms Dewar: Municipalities will be expected to review whether there's a need to do a new official plan every five years. That is still in the legislation.

Mr Grandmaître: So the legislation will not change?

Ms Dewar: The existing provision requiring them to review the need to update their official plan is in the bill as well. That hasn't been changed from the legislation; that still exists.

Mr Grandmaître: If I may ask Mr Martin to tell me more about his three pilot projects, as a mediator or facilitator I hear that you've been very successful. I would like you to describe the model mediation that will take place before an OMB hearing. How will this work?

Mr Martin: I'll tell you how we've done with the pilot and what we expect to do. With the pilot the four communities do two things. If there's a referral to the Ontario Municipal Board of a decision by either council or a committee of adjustment, the clerk sends the referral to the Ontario Municipal Board in the usual way.

They also send a copy to my office, and I have a

mediator-coordinator in the office who reviews the file and decides whether or not the file has potential for mediation. There are some that are too complicated, too many parties, clearly no opportunity. It's something that a tribunal will have to decide on, and we simply indicate that we don't think it has potential.

But if we think there is potential, we refer that file to a mediator. We have five mediators that are available and they're paid on an hourly basis. They take the file, contact the parties, set up the meeting and conduct a mediation process. They file a report with us and a report with the local council either way, whether it's successful or not, and that's it. That concludes the process. It's voluntary.

We have an advisory committee that's attached to it that includes council members and members of the bar and others, and the general feeling was we should start with the least intrusive, most voluntary process we can try and see how that works out. There's no penalty for not participating. People are invited to participate in the mediation. That voluntary system has produced a very successful outcome.

The Ontario Municipal Board has a slightly different system. They have three mediators now and they simply assign individual cases, and at that point it's quite close to the hearing itself. In our case we guarantee 30 days from the day the objection is lodged to have a first mediation meeting. It's much earlier on in the process and it remains local, so it happens in your home town.

We think, though, that there is substantial opportunity, which is why we then asked Cambridge to do a mediation, to do mediation before the council decision, so if you detect local opposition, to actually start a mediation process before council makes a decision. That again has proven to be a very successful approach. What we're interested in doing, and we've talked to the planning professionals and lawyers, is actually training planners in mediation skills so that as a routine part of their contact with the public they're capable of providing mediation services.

We're even talking about, if you needed to have a totally independent mediator, someone who wasn't from that planning staff, creating a trade arrangement so a planner from an adjacent municipality would come in and act as an independent mediator.

The object of all of these exercises is really to avoid the expense of an independently funded mediation process, which could be very expensive if you tried to do it in all of the places there's an opportunity to do it. When we say "change the personality," we mean everybody in the system being very much more oriented to problem-solving and non-adversarial resolution rather than imagining they're going to be at the board as a witness, which is the way it works more often than not now.

Mr Grandmaître: Once Bill 163 is in place, what will be happening to your office or your five people? Will they be totally independent of the OMB?

Mr Martin: I suspect that's something the government's going to have to decide. The term of the office is running until March.

Mr Grandmaître: What would be your recommendation?

Mr Martin: I think that there's a place for this office. It's an interesting experiment in facilitation mediation. The work that my office more directly does is really within the government between ministry resolving conflicts. If you looked at our case load, it's not the mediation experiment or the pilot project. That's done independently; it's done through my office but independently of the day-to-day life of our office. We've resolved about 400 cases, and those cases are really the Ministry of Environment and the Ministry of Natural Resources not agreeing on a file—how do you get one government position out of several different ministry positions?

Mr Grandmaître: Now that the Minister of Municipal Affairs will be the lead ministry, will your office be part of—

Mr Martin: Logically the office could perform that function for the Ministry of Municipal Affairs—

Mr Grandmaître: For the ministry.

Mr Martin: —because the other ministries will remain review agents in many cases, will have a role in the planning process, and their concerns will still have to be worked out.

Mr Grandmaître: One last question on the technical statement. I'd like to talk about the Parkway Belt Planning and Development Act. This act will be repealed and existing amendments and regulations would be provided for in the revised OPDA. What about the existing amendments, and you have quite a number of amendments concerning the parkway belt act.

Mr Martin: That's correct, sir. To clarify, the existing Parkway Belt Planning and Development Act has largely been redundant for over a decade. Once the plan was in place, it became a piece of legislation without any teeth or use, so we're just cleaning that up.

As far as the amendments to the parkway belt west plan are concerned, they are coming through the process right now. They will continue, but they'll be able to be moved ahead much faster using the streamline process. For example, if there is no objection to a minor amendment, that could go through the process without the cost and time of a hearing. So those amendments will continue, but we hope that they'll advance much quicker and be resolved much faster.

Mr Grandmaître: So the parkway belt act will not be repealed once this bill comes into effect, Bill 163.

Mr Martin: The Parkway Belt Planning and Development Act will be repealed at the time Bill 163 comes in, but the processes are under the existing Ontario Planning and Development Act. Those processes which affect the amendments will continue under the new Ontario Planning and Development Act.

Mr Grandmaître: Under the new.

Mr Martin: That's right, sir.

Mr Grandmaître: God, oh God, that's another 10 years, or maybe 15 years. Ron?

Mr Eddy: Just some short questions regarding Ms Dewar's presentation on the top of page 2. I hope that

means a matter could be appealed by the proponent to the OMB, which would be required to proceed within the time frame.

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I'm going to give you a list of these, if you'd respond to them, to save time.

Number 4, that means, I hope, either the approval authority or the OMB.

Next page, page 5, the second paragraph: The Municipal Act prevents a council from delegating its authority, and this says it would. I'm wondering how that will be resolved.

On pages 6 and 7, I'm wondering about the wording here and the relationship with York and Peel regions, which do not have official plans—that's not mentioned—and also about Metro, whether the approving authority is going to be the constituent, if they're called that, municipalities.

Going over to Mr Jones's paper, just two quick items. On the second-last page, concerning the funding of the position of local government disclosure of interest commissioner, it looks to me like you're preparing to allocate the costs to the municipalities.

On the next page, unless a council passes a resolution, a member who's not present for three successive meetings is no longer a member, absents himself. I'd like you to comment on those items just briefly, if you could.

Ms Dewar: I may have to ask you to repeat a couple. On the top of page 2, "Where the approval authority has not made a decision within the specified time frames, the matter could be appealed by the proponent to the Ontario Municipal Board," yes, that would be within a specified time frame.

Mr Eddy: The OMB would be required to proceed.

Ms Dewar: There are no specified time frames for the Ontario Municipal Board.

Mr Eddy: Isn't that unfortunate? Thank you, I agree.

Ms Dewar: I'm sorry, the next one?

Mr Eddy: Dismissal powers. I'm taking it as either the approval or.

Ms Dewar: Either the approval authority or the municipal board could dismiss for all the items listed on the bottom of page 3, but the Ontario Municipal Board could also dismiss if the fee has not been paid or if they have requested further information and they haven't received that information. So there are those two extra.

Mr Eddy: Okay, that was stated.

Next, delegating authority by council to a committee.

Ms Dewar: Council could delegate the authority for minor variances to a committee of council or a committee of adjustment or to staff.

Mr Eddy: The Municipal Act prevents the delegation of authority by a council. You've got a conflict there, I think. Better look at it. You know what I'm talking about. The Municipal Act specifically says a council cannot delegate its authority, so I don't know.

Ms Dewar: We'll get back on that.

Mr Eddy: Yes, okay, that's fine.

Ms Dewar: The municipal empowerment, I believe, was the next one.

Mr Eddy: Yes, it looks like you're going to assign power to regional governments, including York and Peel, even though they don't have official plans.

Ms Dewar: York and Peel are not going to be delegated that power until they have an approved official plan.

Mr Eddy: Oh, it doesn't say that. Then I'm wondering about the situation with Metro.

Ms Dewar: The situation with Metro is that essentially there has been no change through Bill 163 to any of its powers. They will remain as they are now.

Mr Eddy: So that's the local municipalities.

Ms Dewar: Yes.

The Chair: Mr McLean.

Mr Eddy: Mr Jones was going to answer a question.

Mr Jones: You had two.

Mr Eddy: Yes, short ones; they were very short.

Mr Jones: You had two for me. In terms of the commission, it was originally proposed that the commission would be paid for by local government.

Mr Eddy: By the local government or by the province?

Mr Jones: By the local government.

Mr Eddy: Oh, did they?

Mr Jones: Originally it was proposed, okay?

Mr Eddy: They proposed that?

Mr Jones: No, the government proposed.

Mr Eddy: Oh, I see. Okay.

Mr Jones: In the submissions that were received to that proposal, local governments expressed the opinion that they did not support this funding approach and they asked the government to reconsider the method for funding, and we are in the process of reconsidering that.

In answer to your other question about members of council losing their seat if they miss meetings for three consecutive months, not three meetings—

Mr Eddy: Three consecutive months. So that's your 90 days?

Mr Jones: That's right. The legislation covers it off.

Mr Eddy: Yes. It's three months, isn't it?

Mr Jones: That's right.

Mr McLean: Who's going to appoint the commissioner? You say that the commissioner's going to be paid for by the municipalities. Who's going to appoint the commissioner?

Mr Jones: The commissioner will be appointed by the Minister of Municipal Affairs, and I did not say that it would be paid. It was originally proposed. Municipalities have asked us to reconsider that and we are reconsidering it.

Mr McLean: So you're telling us today then that it's reconsidered and the ministry then is going to pay for it?

Mr Jones: I would prefer the minister to make the statement on government policy as opposed to me.

Mr McLean: Maybe the parliamentary assistant could indicate whether they're going to pay for it or not.

Mr Hayes: We're looking very favourably upon not having the municipalities pay for the commissioner.

Mr McLean: Thanks. I have a question with regard to a statement you made in your opening statement:

"A regulation power is provided that would permit the details of matters to be described in the statement to be established by regulation. A draft financial information disclosure form was circulated to all municipalities and local boards during June. Included in that form was the provision that no member would be required to disclose the value of the interest and that only those interests with a value exceeding \$2,500 are required to be disclosed."

Mr Jones: Right.

Mr McLean: Would a car, a boat be part of the—

Mr Jones: No, if you notice from the form that you have in your package it's a very limited, specific list of financial information that has to be disclosed. So this notion about jewellery, cars and collections that you have, none of that's required. It's with respect to—

Mr McLean: Money in the bank?

Mr Jones: —property interests, where you get your money from employment and things of that nature. It's a very specific list. No cars.

Mr McLean: So you don't have to put down what you own then, a car or a boat, as an asset?

Mr Jones: That's correct.

Mr McLean: Thank you. There was a question asked with regard to consulting with other ministries. I thought the comprehensive set of policy statements that has been laid out was that this ministry was going to be making the decisions and that the local government was going to be making a lot of them. Why have we now got consulting other ministries? I thought that was to be done away with.

Mr Martin: That's not the intent at all. The policies represent a range of government policy interests that include the interests of a variety of different ministries. They were generated by different ministries. The other ministries have within them the expertise to make the review and approval decisions. By and large, that will remain as is, except in circumstances where the review function has been transferred somewhere else through agreement. I mentioned the Grand River Conservation Authority, for example, doing water-related.

That is the desire and intention, to really take the review function out of the provincial government and locate it in a more consolidated way and more locally. But that certainly won't be available for some time. Tomorrow morning or whenever the legislation is actually in place the Ministry of Municipal Affairs, the Ministry of Natural Resources and the Ministry of Environment will do what they do today. They'll have planning people reviewing their aspect of an application.

One thing we've done to try to consolidate that is take the routine applications, so instead of circulating, as we do now, 90% of applications to the Ministry of Environment, only circulate the 10% that require the specialized

knowledge of a Ministry of Environment person. The experiments we've done with that, the pilots in Metro have been very successful, so you'll see Municipal Affairs providing that service for most ministries, but there will remain that function in ministries where their expertise is needed.

Mr McLean: Thank you. My next question is to Mrs Dewar. "Planning boards would now have the power to zone lands in unorganized areas"—or territories I presume?

Ms Dewar: Yes.

Mr McLean: How many unorganized territories are there in the north and how many planning boards are there that do not have the power now to make those zones?

Ms Dewar: There's no provision now in the current act to allow planning boards to zone. The land use controls on unorganized areas have been through a minister's zoning order that the minister has put on. What this does now is it gives planning boards the authority to zone and it also allows the minister to deem any of those zoning orders to be zoning bylaws for the purposes of those areas.

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Mr McLean: How many areas in northern Ontario that are unorganized do not have any planning?

Ms Dewar: I believe there are approximately 20 planning boards and most of them do have some planning controls. I can get back to you with the number.

Mr McLean: I guess the question that I'm getting at is, are you now going to have the jurisdiction and the power to put zoning bylaws on all of those unorganized territories whereby they will be zoned for planning purposes?

Ms Dewar: Yes. The intention is to allow for the zoning controls to be administered by the planning board, so that they're administered locally.

Mr McLean: The comprehensive set of policy statements with regard to putting forward "clear provincial policies regarding the environment," are those policies going to be clear enough now that an aggregate person who wants to establish a quarry will be able to do so as I read in the policy statement that you have?

It says, "Clear and reasonable policies shall be provided to permit the establishment or expansion of pits and quarries." Is that going to be done simply now or is it going to continue to be a long-drawn-out process? Is that going to be within the mandate of the 180 days?

Ms Dewar: I believe so.

Mr McKinstry: Maybe I could take a stab at answering that question. There will continue to be provincial legislation governing the establishment of pits and quarries and the policy statements don't attempt to change that. However, what these do is they attempt to put a land use planning framework on to what kinds of land uses could occur on aggregate deposits, for example. But in fact we have simply taken the existing mineral aggregate policy statement and put it into this package of provincial policy statements.

Mr McLean: So you're telling the aggregate producers now it's going to be easier now to locate and have it rezoned?

Mr McKinstry: I don't think we're saying that. I think we're saying there is a provincial planning framework and that existing mineral aggregate policy statement stays in effect.

Mr McLean: What does your policy statement say with regard to waste management, the feasibility of locating new waste management sites?

Mr McKinstry: If my recollection serves me right, I don't think the policy statements deal particularly with locating waste management sites. They do deal with hazardous sites. They talk about where development should or should not take place on lands that are contaminated, which may have been contaminated by waste management.

Mr McLean: The other question I have is on agricultural land use policies and it has to do with "one lot for a farm operation for a full-time farmer of retirement age." Who is determining what that farmer's retirement age is?

Mr Grandmaître: His bank manager.

Mr McKinstry: If I could continue with the answer to that, I guess one of the things we were doing in these policy statements was providing broad general policy direction. We weren't attempting to be specific. We'll be looking to municipalities, using the guidelines that we're going to be developing to help them, to think through what a reasonable retirement age would be.

Mr McLean: Are you trying to have one policy statement and one severance policy for all of Ontario?

Mr McKinstry: What we're doing here is basically saying there are some minimums. Municipalities can be stronger. For example, some municipalities may want to have no retirement severances, and we're saying that they could do that. The policy wouldn't prohibit them from doing that.

Mr McLean: Are you telling me then that the northern municipalities, if they wanted to have a policy for northern Ontario, could have three or four severances, which they would like to have?

Mr McKinstry: If it's on prime agricultural land, the policy would say that they could only have one retirement severance according to these policies. That's why I'm saying it's a minimum. But this is only obviously in classes 1, 2 and 3 agricultural areas.

Mr McLean: I'd like to return to minor variances and it says, "Council could delegate the authority to a committee of council, committee of adjustment or staff." But it says, "Municipalities would have the option of establishing a two-step process, with council reviewing the decision of the committee of adjustment if requested to, as long as there is no council member on the committee."

Wouldn't the municipalities be wise, then, to not have any council members on the committee, and then they could then review all of the severances that are made if they're minor variances?

Ms Dewar: If the municipality wanted to adopt this two-step process, it would be with the requirement that

there's no council member on the committee. So, yes, that would be a situation where the municipality could use the two-step process.

Mr McLean: Would they have to have the minister's approval to do that?

Ms Dewar: No.

Mr McLean: They could do that on their own?

Ms Dewar: Yes, I believe so.

Mr McLean: Okay. The other one is to do with the—have I not asked enough questions yet? I've got lots of time, haven't I?

The Chair: Yes, you do.

Mr McLean: Great.

Interjection.

Mr McLean: You've got a short one? Go ahead.

Mr Jackson: I wanted to get into the question on the conflict commission review area. Members of cabinet have an extended caveat that they can't do business one year or two years—I forget which—after they leave public life. The two-year window that you're referring to for the registry is confined simply to the registry? It's not confined to their activities?

The reason I ask whether you have looked at that is I had a case in my own school board jurisdiction, where a trustee left public office and then immediately was hired as a consultant doing extensive engineering work for the school board. If we're saying that we really don't differentiate in terms of standards regardless of the level of your public office, that it's a standard we're seeking, why have we not transferred that similar standard to that level as well?

I might even extend the question to, does it include the municipal sector—when I say "municipal," I mean municipal office—as well as the school board? I just know of an absolute case that I thought was rather shocking and inappropriate, frankly.

Mr Jones: During the conflict-of-interest consultation deliberations when they travelled the province, there was some discussion of this. In the final analysis, a determination was made that we did not want to restrict local persons' ability to be able to be gainfully employed after they leave public office, given the part-time nature of many of their works. We did not move to legislate and restrict post-employment activity in any of the local government sectors, whether it's school board or municipal.

Mr Jackson: That's unfortunate, because I've seen it become very lucrative for people to actually make more money by leaving public office. A limited public service becomes an entrée to cornering the market. I know of several examples in my own community of Burlington where that occurred. It's the standard we have to follow but it may not necessarily be the standard for everybody else.

My other quick question: Did you cost-estimate the creation of the commissioner's office, the local disclosure commissioner—you'd have a provincial commissioner, obviously, and then you'd have the various panels. Was there any discussion in terms of the numbers of commissioners that would be required and/or what that cost-

estimates? It's still an open-ended question as to who is going to pay for it. Surely your review activities would have determined what that cost might be.

Mr Jones: Yes, and over the years we've discussed with the municipal sector and the local government sector in general the possibility that it could cost as much as \$2 million for the operation of the commissioner's office.

Mr Jackson: Does that include the local disclosure commissioners in each corner of this province?

Mr Jones: Really the commissioner that's provided for in the act, we're talking about his office and the whole of his duties.

Mr McLean: The other question I have is with regard to, "Goal E, conservation, promotes the efficiency of energy and water use through land use planning." Are we wasting water now and how are you going to preserve that through land use planning?

Mr McKinstry: This was in policy E?

Mr McLean: Yes.

Mr McKinstry: What we're thinking here is, these are matters which can be helped by land use planning and we want the municipalities to be thinking, in doing their land use planning, how they could be helped. You'll notice that those policies do not have a mandatory edge to them, that they are suggestions to municipalities that these are good planning things they should think about.

Mr McLean: In the cabinet's approval of a set of policy statements, they're saying: "Legally existing pits and quarries shall be identified and protected from incompatible land uses." If these operations are permitted actively, with no use or other activities permitted that would be incompatible with mineral aggregate operations, how are you going to see that they are protected from incompatible land use?

Mr McKinstry: This is the same policy statement that was in effect before. This is the existing policy statement that's been in effect for a number of years, and I guess cabinet's intent was not to change that, simply to bring it into the new statement.

Mr McLean: Well then, why don't you put something in here that would protect the farmer that's farming and have it so that's he protected, that he can continue his operation without being interfered with by zoning and housing?

Mr McKinstry: I guess we thought we made it clear. For example, in wetlands we made it clear that existing farm operations could continue. There was some concern from the farm community about the wetlands and we had made that clear. Now, we're not sure what else—

Mr McLean: But what are you doing to protect that farmer who lives next to Nobleton and Nobleton wants to expand, and according to the rules they can, what's protecting that farmer to let him stay in business? Anything?

Mr McKinstry: I guess the thing that would protect him is, if it's his land, he could not sell his land.

Mr McLean: There's nothing in here to stop the sites that are being proposed now in my friend's riding to put a dump in?

Mr McKinstry: From putting—

Mr McLean: A disposal site, garbage.

Mr McKinstry: The policies are not dealing with that, no.

Mr McLean: No. This is under the IWA?

Mr McKinstry: That's right, yes.

The Chair: Thanks very much. There are no further questions? I'd like to thank all of you for taking the time to come and to provide presentation and assistance to this committee. Thank you very much.

We're going to recess for approximately half an hour. I'm not sure whether the people will be here exactly at 4 or earlier, but we should be safe to say we'll recess until 4 o'clock.

The committee recessed from 1523 to 1603.

CITY OF ETOBICOKE

The Chair: I'd like to call the meeting to order and would ask Ms Brenda Burns to come forward and also Ms Laurie McPherson, director of policy and research division. Welcome to you both. You have half an hour for your presentation. If you want the members to ask you questions, leave plenty of time.

Ms Brenda Burns: Thank you, Mr Chair. My name is Brenda Burns and I'm a solicitor with the city of Etobicoke. With me today is Ms Laurie McPherson, who is the director of policy and research division of the city of Etobicoke's planning department.

The city of Etobicoke has reviewed the provisions of Bill 163 and has a number of comments. They are six in number and we'll just review them briefly. We've submitted to you the city of Etobicoke's report to council as well as a brief on our presentation today, which will go into more detail on what we're about to say.

Firstly, the city of Etobicoke supports the retention of the Minister of Municipal Affairs as the approval authority for the local official plans in Metropolitan Toronto. However, in the event of delegation, approval powers for local official plan amendments should be granted to the local area municipalities once the overall municipal official plan has been approved by the minister.

Once the municipal official plan has been approved by the Minister of Municipal Affairs, and in order to further expedite the approval process, municipalities themselves should possess approval powers with respect to amendments to the official plans.

Any amendments to the municipal official plans are required to demonstrate conformity with provincial policy statements and the Metropolitan Toronto official plan. So the necessary controls on local planning would be in place but the amendment process would be significantly shortened.

Secondly, the city of Etobicoke is not convinced that the proposed section 17 provisions affecting the processing of development applications will streamline the processing of those applications.

In particular, subsection 17(16) of Bill 163 states that 30 days must follow a public meeting before council can make a decision on an official plan or an amendment, unless there is more than one public meeting, when

adoption can then take place 30 days after the first public meeting.

This is a change from the current provisions of the Planning Act, which allow council to adopt an official plan or amendment following the holding of a public meeting and provided that an opportunity was afforded to the public to submit comments. It's not clear why there should be one month following a public meeting before council can make its decision, particularly on minor amendments. The city would prefer therefore that the Planning Act provisions not be amended in this regard.

Subsections 17(17) and (18) state that after the notice of adoption Bill 163 requires the complete record, not just the notice of adoption, be sent to the approval authority.

The clerk's department at the city of Etobicoke has advised us that in certain situations, particularly those involving complex applications and amendments where there has been extensive public consultation, that there may be difficulty in meeting the 15-day time restriction prescribed under these sections.

Subsections 17(7) and (8) state that regional, metropolitan and district municipalities would be required to prepare official plans, while for local area municipalities official plans are discretionary.

This requirement establishes a hierarchical approach and does not take into account that most land use decisions are made at the local level. Most of the land use tools, such as zoning bylaws and site plan approval, are at the local level. So local official plans should also be mandatory unless delegated to a higher authority.

Subsection 17(34) allows the approval authority 150 days to give a notice of decision on an official plan. The time frame for this decision does not start until the complete application is received.

Subsection 17(24) allows a 30-day referral period following the 150-day approval review period, with the last day of referral to be shown on the notice of decision. If the approval authority fails to give a notice of decision within the 150 days, then the amendment may be referred to the Ontario Municipal Board.

Etobicoke does support setting time restrictions on the approval authority in the processing of official plans or amendments. However, in the event that circulation is not completed within the 150-day time frame, the minister should first be required to provide interested parties with a status report update in order to determine whether or not referral to the Ontario Municipal Board would be necessary. In the event that a status report is not provided, the amendment may then be referred to the board. Automatic referral upon request following the expiry of the 150-day time period places an unnecessary burden on the OMB to deal with what might be purely an administrative function in gathering information.

Subsection 22(1) of the bill requires municipalities to hold a public meeting within 180 days of all applications for amendments. These provisions do not make it clear whether a public meeting is required regardless of whether council is approving or refusing an application for amendment. Changes should also be considered to

section 17 of the Planning Act, which deals with applications supported by council. In addition, there's no obligation on the part of the applicant to provide all necessary documentation, such as essential studies and fees, to assist staff in evaluating the proposal within the specified time frame. This should be a requirement so that the 180 days should commence from the time a completed application is received, including all fees and all necessary information.

The city does support subsection 17(12), which states that council must inform the public of the power of the approval authority to refuse to refer a proposed decision as well as the powers of the OMB to dismiss an appeal if there are no oral submissions at the public meeting or no written submissions prior to the adoption of the plan or amendment.

The city does support this initiative. This provision eliminates the opportunity of last-minute referrals to the OMB, particularly in instances where the objector has not participated in the process and not identified or recorded any specific concerns.

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Subsection 22(3) again provides that if council fails or refuses to adopt an amendment within a 180-day time period, only then can an applicant request council to forward its application to the approval authority. The recommended time frame of 180 days is more realistic than the current 30 days. Such a measure eliminates the potential for an applicant to submit an application while simultaneously requesting referral to the OMB without first undergoing council's consideration and due process so that a hearing date can be established.

Etobicoke's third main concern is that the wording of subsection 3(5) should not be changed from what it is presently, "shall have regard for," to "shall be consistent with." The present wording provides for interpretation of policy statements to reflect local circumstances.

The city maintains that the phrase "consistent with" is undefined and does not allow opportunity for interpretation based on local circumstances. The new wording forces strict conformity with policy statements. This is a problem, particularly as the legislation does not provide for resolutions to potential conflicts between policy statements. The wording "shall have regard for" allows municipalities to take into account the policy statements when making their planning decision, but also provides them with sufficient flexibility to interpret these conditions.

The fourth concern of the city of Etobicoke is with respect to section 2 of the Planning Act, which should not be further expanded to include the new clauses "(o) the protection of public health and safety; (p) the appropriate location of growth and development; (q) any other matters prescribed."

These additional clauses are so broad in scope that their effect might be to provide the minister with an unfettered discretion to intervene in local planning matters such as the urban design/built form site plan issues that Etobicoke has recently faced during the motel strip hearings. Section 45 of the Planning Act also should not be amended to delete the right of appeal on minor

variances to the Ontario Municipal Board.

The legislation proposes that council will have the final decision on minor variances instead of permitting the right of an appeal to the OMB. This legislative change was undertaken in order to reduce the OMB's workload, and this change has not been supported by the city of Etobicoke. Etobicoke's committee of adjustment staff have advised that they support the position of the Ontario Association of Committees of Adjustment and Consent Authorities, which maintains that minor variance appeals take up only 6% of the OMB's time, and that removing the right of appeal to the board for minor variances would not meet the aims of the Sewell commission to restore integrity in the planning process and make the process more timely and efficient.

Etobicoke also has specific concerns about the sections of the bill dealing with conflict of interest. These concerns are more particularized in the briefs handed out to you, but in particular we are of the opinion that the powers of the commissioner are extensive and unwarranted. The legislation contains no necessity for any individual making allegations of contraventions of the act to bring forward any proof of the charges. Neither is there any deterrent if the charges are unfounded or if the proceedings are commenced for frivolous or vexatious purposes.

Also, given the commissioner's extensive rights to information and access to records and the commissioner's responsibility for receiving, investigating and commencing prosecution proceedings based on evidence garnered, there is the appearance that an allegation would only come to the court by the commissioner if there had been a virtual finding of guilt by the commissioner. This approach, we believe, would seriously undermine the principle of the presumption of innocence.

Those are our comments, and as I said, they are more detailed in the briefs we've presented to you.

Mr Eddy: Thank you for your presentation. I'm most interested in it. It's certainly designed to facilitate the planning process, the recommendations you make, and to reduce the costs, in my opinion. We're told that the change of wording from "shall have regard for" to "shall be consistent with" of course is much preferable to the wording "shall conform to," which was considered, so it's middle ground. You may or may not agree with that.

The point you make about the last-minute referrals to the OMB, would you be willing to have any qualification to that? We're told that, for some reason or other, an objector or person who might object may never hear of a particular application, or it may be a new owner who will be seriously affected, and therefore they should be involved and have the right to participate even at the last minute.

Do you have a viewpoint on that? Should we have any qualification on that particular recommendation that you're making? What do you feel about that? Because I think that is a concern that's been registered with many of us by people who are concerned about some of the changes.

Ms Laurie McPherson: Perhaps I'll answer that

question, Mr Chairman. My understanding is that the OMB would have the authority to not accept the referral if they so wished. They would have the discretion to consider special circumstances such as that. I don't think the act prohibits that.

Mr Eddy: And you would agree with that?

Ms McPherson: Generally, yes.

Mr Eddy: Okay. The other question I have is about the delegation of approval authority. It appears to me from your brief that the city of Etobicoke would like to be treated more like the separated municipalities that we have in Ontario, like the city of London for instance, and many other cities that are not in a two-tier system of government. It seems to me that that would expedite the whole planning process. How does Metro feel about that, or has there been any discussion by the—we may be getting a presentation from them.

Ms McPherson: I believe you'll be getting a presentation from Metro because their council position is that they would like to have the approval authority. I think the local municipalities in Metro are unanimous that the local municipalities would like to have the authority for the amendments if the minister is going to delegate. If the minister is not going to delegate, then the city of Etobicoke would like the minister to retain that authority.

Mr Eddy: Yes, I tend to agree that the local municipalities should have that right, and then Metro should be given some approving too, instead of having the province, because what you really have is a three-tier system of planning, and that's too costly, too long and unfortunate.

Mr Grandmaitre: You say that under subsections 17(7) and (8) of Bill 163 regional, metropolitan and district municipalities would be required to prepare official plans for local area municipalities and official plans are discretionary. You're saying that Metro and other regional governments should all have official plans.

Ms McPherson: Yes. We're not disputing the fact that they're mandatory at the regional level. We're just saying that we think they should also be mandatory at the local level, unless the local level wishes to delegate that up to the regional level.

Mr Grandmaitre: Delegate. Very good. Thank you.

Mr McLean: You indicate that there's only 6% of the municipal board's time that is spent with minor variances. I thought we had some indications from the minister there's a lot more time than that spent from their perspective on dealing with minor variance appeals.

Ms McPherson: That number came from a publication of the Ontario Association of Committees of Adjustment and Consent Authorities, and that's what our committee of adjustment provided us with for that. We didn't do the research to come to that number ourselves. That was the association's feeling of what the number was.

Mr McLean: I read this bill fairly good and I haven't seen anything in here that indicates to me with regard to planning development. There used to be a 5% for parks or money in lieu. Is it in this bill that you know of?

Ms McPherson: I believe the parkland requirements have not changed between bills.

Mr McLean: So the 5% or whatever deemed appropriate by the municipality would still be there. What's your feeling with regard to the 30 days? There's been a lot of discussion with regard to the time limits that have been put in this bill. Do you think they can be met? Do you think they're along the lines that municipalities could meet the time limits?

Ms McPherson: Which 30 days? I'm sorry.

Mr McLean: The 30 days for appeal. If you don't appeal in 30 days, it's finalized.

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Ms McPherson: In fact our position would really be that if the minister doesn't make any modifications in that report, there would be no 30-day period. If people wanted to refer, they would refer within the 150-day time limit that the ministry has to report, and only if the minister makes modifications to the plan would there be an additional 30-day appeal period. But in fact our feeling is the 30-day appeal period makes the process even longer. It doesn't help shorten it.

Mr McLean: The bill allows the approval authority 150 days to give a notice of a decision on an official plan and the time frame for this decision does not start until the completed application is received. So the application has got to be all complete, then there's 150 days.

Ms McPherson: That's correct.

Mr McLean: That, in your estimation, would be plenty of time?

Ms McPherson: Generally speaking, yes. Our concern is with complex documents, for example, a parent official plan or a secondary plan or a very complex private amendment where there has been years of applications, public meetings. The ministry staff have to circulate that to all the different other ministries. They have to get all the comments. They have to incorporate them, discuss issues with the municipality.

So generally speaking, yes, but our feeling would be that for complex applications there should be some provision in the act where after 150 days the minister must present a status report if they're not prepared to present a decision. That status report would say, and perhaps it could be built into the act, that they could get an additional 30 days or 60 days or whatever an appropriate time would be, if it's a complex document, to say in the 150 days they would have to present the report: "We haven't completed it. We still have outstanding comments from the Ministry of Environment that we're trying to resolve. It'll likely take 30 more days." Then they would be allowed that 30 extra days before the automatic appeal to the Ontario Municipal Board would kick in.

On simple applications and simple amendments I don't think that 150 days would be a problem, but on the complex applications you might end up in a situation where an applicant or a city then refers it to the Ontario Municipal Board and waits a year for a hearing, and it's a very expensive and timely hearing, when the only problem at the ministry was that it was trying to resolve one concern from one ministry, and if they had 30 additional days, the issue could be cleared up.

Mr McLean: You expressed very strong views with regard to the minor variances. You don't think that they should be gone by without being able to appeal them to the OMB. Do you feel that other municipalities in the Metro Toronto area are of the same opinion?

Ms McPherson: I believe yes. I can't say that with any certainty. I know the city of Toronto, I don't know if they're going to be making a presentation, but they had done a brief survey of other municipalities and their indication was that a number of the municipalities had the same concern.

Ms Harrington: Thank you for your presentation. It was very well presented. I had a question regarding your concern number 4. You picked out a couple of the subsections of section 2 and described them as being so broad. It seems to me in looking at the list in section 2 that very many of them are broad; for instance, the minimization of waste and the adequate provision of employment opportunities. It seems to me that they're all guidelines. I'm wondering why you would pick those two particular ones, the protection of public health and safety and the appropriate location of growth and development, as ones you would object to.

Ms McPherson: Perhaps I'll answer that question again. The old Planning Act had 10 items of provincial interest, and the Sewell commission I believe expanded that to 14. Those were ones that the city supported. The additional three that have now been put in are very broad; for example, the appropriate location of development. That's what a local municipality normally does, determine the appropriate location of development, and clause (q) is "any other matters prescribed." In addition to section 70, which says that they can add any at any time, basically what it does is it allows the minister to declare a provincial interest in any matter whatsoever, anywhere, any time.

Etobicoke had, unfortunately, a very bad experience recently with that very situation where a motel strip area in Etobicoke went to a lengthy Ontario Municipal Board hearing and the Ministry of Municipal Affairs was quite involved and their objections related to built form/urban design guidelines. At the end of the day, I think it was agreed by most parties involved that the minister really shouldn't be getting into that kind of detail about how a building looks and how big it is and whether it's stepped or not. That was under the old act. If this act gives even more powers to step in and have that type of intervention, then we have a concern.

Ms Harrington: Yes, it seems that these are guidelines which the province would wish development to respond to, and you say 10 of these 14 were already in effect.

Ms McPherson: Yes, I think the Sewell commission added about four more that had come out for public comment in the past, and now this act has three additional ones. Our concern is that based on any of these, the province can then declare a matter of provincial interest, then once they get into that, the ultimate approval is back in the hands of cabinet and away from the Ontario Municipal Board.

Ms Harrington: I believe instead of declaring a

provincial interest that this act in fact changes that, that they could get an interim control order only, but maybe our staff could respond to that. Thank you. There may be other people who have questions.

Mr Wiseman: I come from outside of Metro and part of this brief, and you don't need to comment on this, is that I seem to be getting sucked into what I would consider to be a minor skirmish in the turf war between Metro council and the local governments. You don't have to comment on that.

Mr Grandmaitre: How do you know? She might have a comment.

Mr Wiseman: I would think that would be an opinion and that maybe some staff people might not want to delve into that area. I just have that sense of some of this.

I would like, because I think it's important—one of the things that the residents are telling me is that they feel somewhat powerless in the face of governments at any level and that they need to make sure their rights are protected. The comment "frivolous and vexatious" is a phrase that I have not heard defined in a way that puts any kind of substance or some kind of rounding to the edges that I could be comfortable with. Could you offer us a definition of "frivolous and vexatious"?

Mr Grandmaitre: Same answer as this morning.

Mr Wiseman: I hope not.

Ms Burns: I think that "frivolous and vexatious" is sort of a legal term which is used often, and all it means is that if it's something that's commenced without foundation, has further purposes or further intents, and there's no penalty for that. There might be any number of reasons, someone might bring a charge, I wouldn't even want to guess, but the fact that those reasons, if they are so extreme, go unpunished is something that we think should be addressed.

Mr Wiseman: We have phrases like "minor amendments," "frivolous and vexatious," and I think about the residents in my community who believe that what they're appealing to the OMB for is extremely important to them but that the council in fact thinks that they don't have a case. They're not supported by the council in any way and they would deem them to be frivolous and vexatious.

As a sitting member, I want to be very careful in any kind of changes that I make in legislation that I don't reduce the ability of residents to access the political decision-making. I don't want to reduce that in any way. I want people to be able to feel that there's a forum for them to be heard. So when words like "minor amendments" and "frivolous and vexatious" come up, I see those as doors slamming in the face of people who feel that they've been wronged.

The Chair: We ran out of time. I thank both of you for the submission you made today. Thanks very much.
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COUNTY PLANNING DIRECTORS OF ONTARIO

The Chair: I would call Mr Gary Cousins, County Planning Directors of Ontario. Welcome, Mr Cousins. You've seen how the proceedings go. Please begin any time you're ready.

Mr Gary Cousins: Good afternoon, Mr Chair and committee members. My name's Gary Cousins. I'm the director of planning for Wellington county and I'm here representing the County Planning Directors of Ontario.

This is the first opportunity our association has had to make a presentation in front of one of the provincial legislative committees, and I hope we can offer some constructive comments on Bill 163. We have a great number of concerns about the legislation, but we've decided that we can best serve our purposes by zeroing in on those things that most directly affect counties in Ontario.

Over a million and a half people live in the 26 counties in Ontario. Sixteen counties have established planning departments and many of them have operated for over 20 years. These planning departments provide a variety of land use planning and community development services and have extensive public contact on a daily basis. The County Planning Directors of Ontario manage these departments and the views we are expressing are our own.

We believe that the existing planning system has broken down because the degree of provincial involvement required to permit, license or approve virtually all aspects of municipal authority exceeds the staff resources available to support such a high level of involvement. Simply put, provincial resources cannot support the approval system that's in place today.

We believe that the solution should be to encourage responsible planning and decision-making at the municipal level, where the public have the greatest opportunity to participate.

We are strong advocates of community-based planning and are concerned that Bill 163 and the overall reform package diminishes the ability of people to make important decisions about their own communities. As examples we would suggest that the provincial policy statements go too far in setting local policy, that changing the current requirements "to have regard for" provincial policy to "be consistent with" prevents communities from tailoring provincial policies to suit local conditions or to recognize the diversity that exists in Ontario today. Lastly, the failure to empower counties in the same manner as regions makes the residents of counties second-class citizens overseen by a Toronto-based civil service.

Provincial policy statements: We realize that the provincial policy statements are not in front of this committee. It's unfortunate that that part of the reform package that has the greatest impact on people and investment is not a matter to be considered by the Legislature.

At this point there seems little the committee can do, but we would recommend that the provincial policy statements be reviewed within two years' time with a view towards improving the opportunity for community-based decision-making; secondly, that section 2 of Bill 163 be deleted and that the existing requirements for municipalities to have regard for provincial policy be retained.

Empowering counties: Bill 163 provides regions with

positive incentives to plan. Regions are given approval authority for local official plans and subdivisions. Counties are being told to plan and will be given financial penalties if they do not plan. Regions are given carrots; counties seem to be hit with a stick.

In our view, county councils should be given the same opportunity to exercise approval authority as regional councils and they should meet the same obligations. We would recommend that section 10 of Bill 163 should be amended to provide counties with the authority to approve local official plan amendments in the same manner as regions are given that authority.

I should at this time, Mr Chair, tell you that all of the amendments that we are proposing are listed on a yellow sheet at the back with specific wording for each amendment. I don't propose to go over it in detail with the committee.

Section 28 of Bill 163 should be amended to provide counties with approved official plans and prescribed counties with the same powers as regions to approve subdivisions.

These proposals create incentives to plan rather than imposing penalties for not planning. They recognize and reward those counties that have developed county official plans and encourage other counties to do the same. Extensive delegation of approval authority to counties and regions will allow provincial staff resources to be allocated to other activities.

While we would encourage all counties to plan, we would not require county official plans. We would leave it to individual counties and their local municipalities to determine if planning should take place at the county level, the local level or both. In our experience, county planning will evolve when people perceive the need and it will be stronger if it emerges locally. In the meantime, create positive incentives or positive conditions for county planning to evolve.

Municipal planning authorities: Section 8 of Bill 163 proposes the creation of municipal planning authorities or joint planning areas. We understood from the Sewell commission that this was intended to provide a means of intermunicipal planning where county planning had not evolved. We accept this creation reluctantly because we believe it will prevent county planning from developing, but we understand the need.

We have two concerns with municipal planning authorities. First, the bill allows these authorities to be created in counties that have established county planning operations. This will lead to yet another level of planning and duplication of service in areas that do not need it. The potential to undermine existing county planning operations or to create conflict within counties is of real concern to us.

The bill also proposes to eliminate the county levy for planning in these areas. Aside from the potential to undermine county planning, we believe it's inappropriate for the province to determine how a county sets its levy. Leave the financial arrangements between counties and their local municipalities alone.

We would recommend that section 8 should be

amended so that municipal planning authorities cannot be established in counties with approved official plans or in counties which have been prescribed, and that section 8, subsection 14.3(5), should be deleted so that matters of county finance are not legislated by the Planning Act.

Other matters: Section 40 of Bill 163 proposes to allow the province to build counties without official plans to support provincial staff resources. As we have maintained in our submission, the province should use positive means to encourage county planning and the province should not use the Planning Act to interfere with county finance. We would therefore recommend that section 40, subsection 69.2(1), be deleted so that matters of county finance are not legislated by the Planning Act.

I would like to thank the committee for the time you have given us and I would also like to encourage you to support community-based planning; give counties the opportunity to exercise the same approval powers as regions; provide positive encouragement for county planning and avoid the proposed negative approach; and please keep your hands off county budgets.

This submission, as I said earlier, has a yellow page with specific wording for the amendments we would like to see take place. It also has a blue page that outlines the status of county planning in Ontario, listing the counties, counties with planning departments and counties with official plans, and I'm going to very quickly suggest that I'll have to add a correction to this paper. I can see my friend from Middlesex—or from Brant, formerly from Middlesex—will tell me that Middlesex itself has a county official plan and I haven't listed it. They don't, unfortunately, have a county planning department.

The Chair: Thank you. We'll begin with the third party. Mr McLean, five minutes.

Mr McLean: I'm just looking at this section, 69(2), that you referred to, that you feel should be deleted from this bill. "Service of any notice...may be made by telephone transmission of a facsimile of the notice, subject to any rules made by the board under section 91 regulating its use or any practice directive issued by the board." You're saying that you don't like to think they can use the fax machines to send in their approvals. Is that what you're referring to?

Mr Cousins: No, on page 57 of the bill itself, the very bottom, section 40, section 69.2, it says: "If a prescribed county fails to adopt a plan and submit it for approval...the minister may charge fees to the county for the processing of planning applications...."

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Mr McLean: Okay, that's section 69.2 on page 59. It's actually section 40, is it?

Mr Cousins: I have it on page 57 in my bill, unless it's changed, Mr McLean.

Mr McLean: Yes, okay, that's right. The other question that I wanted is the county planning. You say there are 16 counties that have official plans and county planning committees?

Mr Cousins: No, there are 16 counties that have planning departments established, and 10 of them have official plans, actually 11, if I count Middlesex.

Mr McLean: How many counties are there without official plans?

Mr Cousins: Fifteen.

Mr McLean: Do you feel that this bill will put an onus on those counties or regions to proceed with an official plan that haven't already got them, and they won't get anything unless that happens?

Mr Cousins: That's a very hard question to answer, because what the bill says is that the minister can prescribe counties that have the plan. In essence, one year, two years down the road, the minister can tell a county that it must do an official plan and there seems to be no appeal of that. If they don't, the minister can begin to charge them financial penalties for not doing that. Our submission is that you should recognize those counties that are doing planning in a proper way now and give them approval functions and thereby encourage other counties to get into planning.

Mr McLean: But if other counties don't do it, what's the ministry's alternative? As you've said, it's to penalize them, but they'll just sit back and say, "Well, we're going to wait and see how it happens in Lambton county," for instance.

Mr Cousins: I draw a distinction, Mr Chairman and committee members, between county planning and planning in counties. Most counties are involved in planning in some way; it's usually at the local municipal level. Some have not chosen to do county official plans. As an example, Simcoe county has, I think, a great many local official plans, but they do not have a Simcoe county official plan.

I think the first objective of the province is to ensure that good planning is being done somewhere within that county framework and I think you should leave it to that county to determine whether it be done at the local level, the county level or at both levels through a two-tier system.

Mr McLean: But I would have thought that the counties would have been directed to plan. I mean, I can't see them leaving the local municipalities to do the planning and the upper tier not doing it. I would think that the proper way would have been for the upper tier to proceed with a county plan and, if the others want to do an official plan, from my reading of it, it has to conform with the upper tier anyway, so why not just do the upper tier?

Mr Cousins: I think the real question to me, Mr Chairman, again is, do you force people to plan? Do you legislate people to plan? I think legislating people to plan is a little bit like trying to legislate them to think. There seems to be a good deal of willingness to do planning at the local level and that seems to be taking place. You can legislate counties to plan if you think that's appropriate, but I think the commitment to that planning will be less if you tell people they must do it rather than if it evolves because they perceive the need.

Mr McLean: You believe that section 8 of Bill 163, which proposes the creation of municipal planning authorities for joint planning areas, will prevent counties from planning. Really what you're saying is there's going

to be joint planning of municipalities and that's going to prevent the county from planning.

Mr Cousins: I think, if a municipal planning authority is established and if the county is then precluded from raising a levy for planning purposes, it will make it very difficult for county planning to emerge within that community.

Ms Haeck: I take it from the kind of statistics that you've given Mr McLean that your association represents actually a relatively small group of people.

Mr Cousins: Yes, we're a very small group of people. As I said, there are 16 planning operations in the county, and we manage them.

Ms Haeck: I ask that just because I've got some letters from planners within my local municipality who want some recognition with regard to their association across the province of Ontario, so obviously you're probably trying to fit in with that group.

Anyway, aside from that digression, I am somewhat concerned with regard to your comments specifically on the first page of your submission where you raise this point about "to have regard for" the provincial policies and "be consistent with."

I think if you were here a little earlier you probably heard Mr McLean and others talk about that the third option was that it basically had to conform and not just "be consistent with," and that this is sort of the compromise wording that really and truly sets down a series of guidelines which in fact deal with a wide range of subject-matter and interests of residents in my area, and I would suspect in your own. I'm wondering why it would be difficult for a county, or in my case the region where I come from, not to be consistent with those policies as opposed to what you proposed, just simply "have regard for."

Mr Cousins: This has been one of the most widely debated parts of Mr Sewell's work as well. It was certainly controversial as he went through the province discussing it. The current legislation requires us to have regard for provincial policy. In our view, that means that a local municipality has an onus upon it to follow provincial policy, but if there are exceptions within its community that would for reasons of local circumstance dictate that there's a good and ample reason for setting aside provincial policy and following another course on a particular application, they have the ability to do that.

We don't see the terms "be consistent with" or "conform with" as being a compromise between either of them. Both of them, in our view, mean simply that you have almost blind obedience to the policy, very little room to exercise discretion at the local level to determine whether or not that policy fits your needs or whether minor exceptions are appropriate. We think it really removes the ability of local communities to make appropriate decisions for their communities. We prefer the current legislation.

Ms Haeck: I would suggest that there are probably lots of reasons why it would be better "to be consistent with," and I'm looking at my local situation as opposed maybe to yours. But what do you see as the biggest ob-

stacle? What of the 14 or so different guidelines seems to be so onerous that your county can't in fact deal with it?

Mr Cousins: All right, I'll give you probably an example that I use within our county and it has to do with the provincial policies protecting farm land. We would agree very strongly that those are appropriate policies, and our counties adopted strong policies to protect the farm land within our community.

But I would suggest to you that there are parts of Ontario, including places within our jurisdiction, where the pressures on farm land are not that intense, that the amount of good agricultural land lost is very low, and the community priorities may not be as heavily related to protecting farm land as they might be to encouraging some forms of community economic development.

It may be more appropriate within that community to allow some economic development activities that might lead to job creation within that community rather than to save every acre of farm land. It may also be appropriate within that community to allow the establishment of things like fire departments and community parks and those sorts of facilities within that agricultural community. We believe those sorts of things should be open to judgement.

Ms Haeck: But there are only specific classes of farm land that are so protected. I'm wondering if all of Wellington county is class 1, 2 and 3.

Mr Cousins: The parts that aren't are areas that are natural environment or gravel. I would say there are some very small areas of class 4 and 5 farm land. They're generally associated with environmental constraints. We have looked at this fairly carefully, and I would suggest to you that virtually all of my county is class 1 and 2 and 3 farm land, except for natural environment areas. I think you'll find that the same is true of most counties in southwestern Ontario and—well, I'll say southwestern Ontario for that matter.

Ms Haeck: So you're not really looking at intensification in looking at Wellington county, and you were talking Elora, if I'm correct, and Fergus. You mean that the intensification argument in fact wouldn't hold much appeal to your county council, the fact that this would be a better approach to deal with planning rather than putting it on to the farm land.

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Mr Cousins: No, I think our county is adopting the ideas of intensification. We are trying to encourage more intensification within our urban centres. We are seeing changes in all of our planning documents that provide for greater density of development within the urban areas and we agree with that general direction, we just don't agree with it to the nth degree. We think there needs to be a little bit of room to allow some rural development in appropriate locations and we think there's very little opportunity for that under the proposed policy statements.

Ms Haeck: I have to give up the floor, but I don't necessarily agree.

The Chair: We're right out of time. Mr Grandmaître.

Mr Grandmaître: If I may, I'd like to ask the parliamentary assistant a question.

Mr Hayes: I thought you were giving me your time.

Mr Grandmaître: No, Ron will give you his time. Why are counties treated differently than regions? What was the reason the ministry made a difference?

Mr Hayes: I'd like to refer that to staff, please.

Mr McKinstry: I guess the issue that came up with counties and regions is that there's a great variety of counties across Ontario, and I think Gary has referred to that in a sense.

Mr Grandmaître: And regions.

Mr McKinstry: Some counties have planning departments, some don't, some have plans, some don't, whereas all the regions have planning departments, but two regions don't have plans. We have treated those two regions without plans slightly differently in the legislation. But the government is certainly of the view that where we can delegate to counties, that would probably be a good thing to do.

Mr Grandmaître: You will look into it?

Mr Hayes: Yes.

Mr McKinstry: Yes. That's sort of an ongoing thing that we have always done. Some counties are delegated and some are not. So that would continue.

Mr Eddy: I really appreciate this brief. It's an excellent brief. I'd have to point out that, although you're a small group, you're not as small as the association of regional planners across the province; it's even smaller. I do hope that we hear from them as well.

I agree with I guess everything in your brief except appendix B, and you did correct that, pointing out that Middlesex county has a policy plan rather than a land use plan, like the region of Waterloo. I really want to comment on that, but certainly we need changes. As you've pointed out, provincial resources cannot and indeed don't support the current approval systems, so there need to be changes.

Thank you for pointing out the discrimination against counties, because I've been very aware of that and it happens in many other areas in this province. The clerk of Brant county has a long list of where counties are unfortunately treated differently, so I agree very strongly with your opinion there.

Would you agree that in the case of the subject where local municipalities may want to plan with a municipality in an adjoining county, yes, we could provide for that happening but it really should be subject to the approval of the upper-tier council perhaps, and any financing change should also be a decision? That's one question that I have.

Also, I really agree with the fact that the county should have the opportunity to have two-tier planning, single-tier planning at the lower level or single-tier planning at the upper tier. Simcoe county, of course, has just recently with their bill decided they'll have, I believe, a two-tier planning system. But I'm very strong on the other system, either single tier at the county level or single tier at the local level. I think it saves costs, time, money, staff, problems and a long list.

Would you care to speak a little bit more on that and

give your opinion about the suggestion I made about letting somebody plan with somebody else rather than that county. There are instances, I believe, in the province that might be considered to be an advantage by that local municipality.

Mr Cousins: I think we recognize that the concerns that we deal with in planning don't always stop at municipal boundaries and we have no difficulty with the concept of joint planning. The way it's set out, however, it seems to us to undermine county planning, particularly related to the effect it has on county levies. We think that there needs to be some involvement of the counties at the very least. Our preference is if the county has got an official plan, we shouldn't be undermining the operations in that county.

Mr Eddy: Realizing it doesn't happen with Peel region, where Orangeville is right on the boundary in another county. Please continue.

Mr Cousins: Yes, we share boundaries with nine counties and regions in Wellington and we have, not formal planning relationships with them, but we do a number of cooperative ventures, particularly with the region of Waterloo. So the concept doesn't trouble us at all; it's the way it's been developed within the legislation and the fact that it could undermine county planning operations.

We also believe that, as you said earlier, Mr Eddy, we think counties and their local municipalities should have as much choice as possible to determine what's the appropriate planning frame for their municipality, provided that there is planning taking place and that provincial policies and provincial guidelines are being addressed within that community.

Mr Eddy: Which would meet the provincial requirement.

The Chair: We ran out of time. Mr Cousins, thanks very much for taking the time to come here today and giving us your brief.

Mr Cousins: Thank you kindly.

FEDERATION OF ONTARIO NATURALISTS

The Chair: We invite Ms Gonzalez, environmental researcher, Federation of Ontario Naturalists. Welcome. Please begin any time you're ready.

Ms Neida Gonzalez: Hello. My name is Neida Gonzalez and I'm representing the Federation of Ontario Naturalists. The FON is a non-profit conservation organization that has been active for over 60 years. We have approximately 15,000 members and 78 affiliated clubs. We have been quite active in the issue of wetlands preservation and lobbied for approximately 12 years for a wetlands policy statement and have been following the implementation of the wetlands policy statement since 1992.

We also have participated in the consultation process of the commission. We are here to comment on Bill 163 as it pertains to the Planning Act. We're just going to go through the areas that we feel are of most concern to us. I hope that you have the brief that we submitted of August 22. I will start there.

Our first concern is with the purpose section. The

purpose section of the Planning Act in Bill 163 does not clearly set out the protection of the environment. We feel that this is necessary. Also, the package proposed that environmentally sound development would be promoted through both the policy statements and legislation. We feel that this has not been met. The policy statements certainly are in place, but nowhere in the legislation is the environmental protection component addressed. We think the purpose section of the Planning Act is the appropriate place to state an intent for environmental protection.

Secondly, we have concerns about provincial accountability in subsection 3(5). In Bill 163 only the Minister of Municipal Affairs is bound to the policies of the Planning Act, whereas in the present Planning Act all ministers and ministries are bound. We feel that this amendment weakens the enforceability of the policies. We would recommend that this amendment be repealed and that the current status be held where the crown is bound.

The next area of concern is official plan content requirements. In Bill 163 the requirements for official plan content are not in the act but will be listed under regulation. We realize there is a concern about adaptability and flexibility in this area, but we feel that certain basic requirements need to be stated in the act. There are concerns about the appropriate mapping. We feel that this is vital. There is no reason why this can't be stated in the act. We also think that the need for goals and objectives and intent to meet them and how those goals and objectives would be met are things that should be included in the acts and not in regulation.

1700

Secondly, with official plans we feel that alternatives should be looked at when preparing official plans. This is in regard to growth and settlements and infrastructure. This was proposed by the Commission on Planning and Development Reform but has been ignored. We feel that it is vital to move this way and it would make land use planning a more progressive tool if alternatives were looked at as in our EA system.

Also, the commission recommended that appropriate geographic bases be used when analysing municipal issues. We feel that this is very necessary. The FON recommended that this happen. Ecological boundaries must be recognized. One of the examples is water resources where subwatershed and watershed planning is starting to be used by many conservation authorities and some municipalities. Laurel Creek is an example as well as Henley Creek in the Waterloo area and Guelph.

We see that it's necessary for municipalities to recognize that these resources that they're dealing with go beyond their jurisdictions, that there needs to be some planning beyond the current municipal jurisdictions, that with water resources if there's upstream activities, this is going to affect the downstream areas. We feel that with Bill 163 at this point there is an opportunity to start to direct municipalities in this area, not to dictate to them how to do it but to suggest that this is the way that they should be moving. The FON feels strongly that natural resources should have an ecological basis instead of just a political basis.

The other area that we're concerned about is the public right of appeal. We feel that the public right of appeal is severely restricted in Bill 163 through amendments to the Planning Act. Particularly it's the clause that's repeated in a few areas that we have listed in our brief that states that if a letter of objection is not filed or an oral presentation is not given before a council decision is made, the public right of appeal is nullified.

FON believes that these amendments will only hinder the planning process. We feel that it will cause a more adversarial position between citizens and municipal councils. We feel also that the "frivolous and vexatious" clause takes care of appeals that are misplaced and that this is unnecessary, and we hope that these amendments can be removed. We also think that more cases would go to the OMB if this clause remains.

Also, minor variances cannot be appealed. We understand that this is in the bill to try to unload some of the cases at the OMB. However, we see it as a problem because there is no definition of minor variance or a listing of what activities cannot occur through a minor variance.

We feel that if there is not going to be an appeal mechanism, at the very least there needs to be set clearly in the legislation what cannot be done through a minor variance so that there isn't a gap there where councils can decide to include activities that are grey as far as whether they should be a major variance or a minor variance. I think a definition of minor variance needs to be there so that that is clear to the councils.

Lastly, we are concerned about pre-approval site alterations. Vegetation removal and tree cutting on sites before final approval has been a long-standing issue with the FON as well as other conservation communities. These activities have resulted in needless destruction of many natural areas.

There has been the recognition by many government agencies that this is a problem, and there is also an assumption that this bill would deal with this issue. We recommend that vegetation removal and tree cutting be regulated under section 52 of the act where the placement and removal of fill are regulated, and we see it as a fairly clear-cut issue.

In concluding, we'd like to say that these are major areas of concern. We have others but we thought that these changes are the most vital and are ones that can be dealt with quite efficiently and successfully by this committee. Are there any questions?

The Acting Chair (Ms Christel Haeck): Thank you, Ms Gonzalez. I would like at this point to turn to the government caucus, Mr White.

Mr White: Thank you, Ms Gonzalez. You bring forth a number of very excellent points. Of course, as you may know, a lot of these issues have been circulating and they're part of the controversy that we'll be dealing with in the next several weeks, but I think you articulated them very, very well.

I'm wondering if I could, with your indulgence, go to the wetlands policies, to the ecological policies, within the comprehensive set of policy statements. You have a

copy of this, no doubt. Frankly, I've read the wetlands policy. My friend Mr Wiseman and I are probably unique in this, at least in our region, having read the thing backwards and forwards.

What I'm thinking about here is, you mentioned the ecosystem issue and planning on an ecosystem basis. I think you're quite right to point out that the political boundaries and ecosystem boundaries, watershed boundaries, are obviously not identical, not the same. Yet are they not reflective to some degree, at least from a policy standpoint when we talk here about planning from an ecosystem standpoint, of planning that respects the wetlands and adjacent areas? Is this not essentially, both the wetlands policy and this comprehensive statement, a mammoth leap forward in terms of those ecosystem protections?

Ms Gonzalez: Wetlands are one type of ecosystem. They don't encompass an ecosystem approach in itself. It's a site-by-site basis that essentially the wetlands policy statement deals with.

What we're suggesting—and we didn't bring up the policy statements here because we were told that you will not be able to touch them essentially—what we're looking for is an overall ecosystem approach, which the wetlands policy statement or any of the individual policy statements are not. Municipalities, we feel, need to address their resources in a more holistic manner and need to identify what the ecological boundaries are and know what that means, even though they might not be able to plan for it completely at this point.

Certainly we see that the wetlands policy statement was a huge step forward and we're very happy that it happened, but we see it as the first step. Essentially that would be my answer.

Mr White: Does that not become enhanced, though, with this act that sets out the fact that the province will be establishing overall policies that put issues like that to the forefront in terms of municipal planning?

Ms Gonzalez: At this point we're not quite sure. Not having seen the guidelines to these policy statements, we have very little idea how they will be enforced and how they will be implemented. We've just finished doing a study on the implementation of the wetlands policy statement and found that many municipalities have been quite hesitant to implement it, that there have been problems with the mapping, there have been problems of getting in some cases help from the MNR.

It seems even though we have the policy statements we're still at a preliminary step. If there's an opportunity in Bill 163 to help in that direction, we feel that it should happen. We're just suggesting that opportunity does exist and that it should not be—

Mr White: I want to thank you for advancing those particular issues. Thank you.

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Mr Hayes: Thank you, Ms Gonzalez, for your presentation. Just to expand a little bit on the wording about "be consistent with" versus "have regard for." I notice in the one letter, you left this in your package that you're very pleased that we are using that word. Of course, you're no

doubt aware that there are a few others, a fair amount of other people that will be expressing their views on this in opposition to it.

Do you feel that, had this wording been in there in the past, maybe some of our wetlands and other wildlife sanctuaries or flood control areas would be probably preserved more so now, a larger percentage than the 25% of wetlands in the province now? If you had that kind of wording in, that you would have more clout maybe in preserving some of our wetlands in this province?

Ms Gonzalez: We feel that it certainly would help in combination with the policy statements; that without the policy statements, it doesn't really matter if it's "have regard for" or "be consistent with." Our problem with cases that we had at the OMB was that the wetlands were just guidelines. Essentially, without the statements we don't have very much legislative backing. We are happy—"be consistent with" seems to be a bit stronger, but our main point is that we need the policy statements.

Mr Hayes: But there were already policy statements since, I believe, 1988, yet we still had just "have regard for" rather than "be consistent with," and if that wording were changed, going to the OMB, it might have given you more clout.

Ms Gonzalez: Being more specific, the only environmentally progressive policy statement that we think existed before this legislative reform was the wetlands. There wasn't any other policy statement that dealt directly with environmental issues. The wetlands policy statement has only been in existence for two years. The cases that we've been dealing with with wetlands go back almost 15 years, so I am taking more of a historical—

Mr Hayes: Thank you.

The Acting Chair: We have nine minutes for the Liberal caucus, first Mr Eddy and then Mr Curling.

Mr Eddy: Mr Curling was to go first.

Mr Curling: Thank you very much. For the first time I'll precede my colleagues here. They've dominated, with all their intelligence, to this. They are, as you know, members who have been part of the municipality powerhouse for years. I have never had the opportunity to play that role.

I just want your advice on this, because one of the complementary parts of this legislation is that it is intended to streamline and make the Planning Act more efficient. There is a considerable amount of concerns about delays and a long process. I notice when you spoke in your section about subsection 3(5) of the Planning Act, you talked about provincial accountability, and I just want to know why you would feel that all planning decisions should remain binding on every ministry and minister of the crown and you went on include all the other boards.

I think in my limited experience in the cabinet, not very long—we intend to, of course, expand that experience.

Mr Jackson: Are you going to run federally, Alvin?

Mr Curling: But the fact is we found that actually trying to pass things, every ministry took so long to get things approved that, again, we are back to that delay in

process. Why do you feel going back to that process would be effective in making things more streamlined?

Ms Gonzalez: Essentially we feel that, in a lot of the cases with these planning issues, though Municipal Affairs is a key ministry, they are not the only key ministry; 80% of Ontario is crown land. The Ministry of Natural Resources has a great deal to say about what happens on those lands.

As well, with these policy statements, the natural heritage, the comprehensive policy statements that we're looking at, it's the Ministry of Natural Resources that is working on the guidelines. They are the ones that we have to go to when we are looking for information on wetlands or woodlots and various other things. They play an important role and we feel that they should be directly accountable, as well as other ministries, and that it should not just be on the shoulders of Municipal Affairs.

Essentially we feel that we would have to go around the issue extensively if we have a problem through Municipal Affairs, if it happens to be the MNR, Ministry of Housing or Ministry of Transportation, when we should have the opportunity to deal directly with them if it is within their jurisdiction.

Mr Curling: You spoke about intervenor funding, and I think that if you're going to go through those steps, that intervenor funding amounted to an enormous amount. I think organizations like yours would have to have a lot of money to monitor all of those ministries to see that they are accountable, even within the legislation that—

Ms Gonzalez: We don't get intervenor funding and we do what we can.

Mr Curling: So you support a lot of intervenor funding, a larger budget.

Ms Gonzalez: Certainly we would like to see intervenor funding. We haven't mentioned it in this brief because at this point we don't think it's an issue we want to flog, but as an organization we do spend a lot of time trying to monitor things. We don't do a complete job but we try to do as much as we can and we'd like to be able to be helped in that way. We feel that if the policies are binding on the crown, it is helpful to the citizens, because they can directly deal with each ministry. Essentially we'll be creating another layer if we have to go through Municipal Affairs to deal with another ministry.

The Acting Chair: Mr Eddy, you have three and a half minutes.

Mr Eddy: Oh, thank you, I'll just make it. Thank you very much for your presentation and expressing your concern about a healthy environment in Ontario. It's very important. I agree with some of the things you said or many of them, including, and I must speak to this specifically, the need for appropriate mapping because what we're finding out, being involved with the conservation authority, is that there's very little mapping. They're working at it, but some of the mapping that's there is outdated and indeed inappropriate. So it's a very important matter.

I want to zero in on the pre-approval site alterations. As you will know, some of the counties and regions of Ontario have passed bylaws under the Trees Act, requir-

ing an application and a process to get approval. Unfortunately, many do not, and I'd like your opinion on that.

Perhaps all upper tiers should have it and separated municipalities should have the right to do it too. Perhaps there should be something stronger in there about removal of vegetation, which has been mentioned earlier today. Indeed many of us have had experience where developers do go in and remove trees and perhaps all vegetation and there the site sits, causing tremendous, serious erosion. I'd like your viewpoint on that, if you'd elaborate. It's very important. Thank you.

Ms Gonzalez: We did participate as well in the amendments to the Trees Act, where we asked for quite stringent regulations on municipalities essentially on tree cutting bylaws and vegetation removal. Certainly we'd like to see as strong a policy in the Planning Act as possible to stop the vegetation removal and tree cutting that happens before there are even final approvals. If you're asking me for a suggestion on the wording, I would need some time and could give it to you in writing.

Mr Eddy: Yes, I think that will be helpful if you'd supply it, because municipalities are concerned about what's going on. Conservation authorities and the citizens are concerned. So something you would do in that regard would be helpful.

Ms Gonzalez: Certainly we have that work done, as we did it for the Trees Act, so I would be glad to pass that on.

Mr McLean: I want to welcome you to the committee and thank you for your brief. You know, you've asked several of the same questions that I've asked this morning about this Bill 163 with regard to the protection

of the environment. It's not very clearly spelled out, the commitment to the environment, and with regard to the planning decisions, which should remain binding on every minister and every ministry. I think those are important elements of the bill that are not being directly looked at.

The other aspect that you have made is with regard to the boundaries, with regard to the recommendation "for municipalities to analyse issues based on an appropriate geographic basis regardless of municipal boundaries has been ignored." I sat on a conservation authority for 16 years, so I'm well aware of how they deal with the watersheds and how that should be part of an overall planning strategy.

With regard to the public right to appeal, you make some excellent points there with regard to the objections. There are going to be a lot of people who will not have the opportunity or will not know that it has passed, when they should have put in an objection or not. Then the minor variances—I asked those very questions this morning of the minister, clarification of those, so I think you've a well-prepared brief. I hope that the parliamentary assistant will take into account these points you have made and I hope that he will act on them, and the members of the government. Thank you very much. It's excellent.

The Chair: Thank you, Mr McLean. I'd like to thank you very much for coming and making this presentation to us today. Obviously our members found it very useful.

A reminder to committee members: We start tomorrow in Niagara Falls at 10. Our bus leaves here tonight at 6:30 at the front steps. This committee is adjourned.

The committee adjourned at 1722.

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**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

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 Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli
 Hayes, Pat (Essex-Kent ND) for Mr Malkowski
 Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
 Lessard, Wayne (Windsor-Walkerville ND) for Mr Gary Wilson
 McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson
 White, Drummond (Durham Centre ND) for Mr Bisson
 Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

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